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ABSTRACT

The 14 articles serve to promote interaction among Department of Public Welfare staff, judges, attorneys, and other persons or groups working in the area of child abuse and protective services in Texas and to clarify the law and procedure in this area. Included are the following titles and authors: "Perspectives of Child Abuse and Child Protective Services in 1976" (B. Anderson); "Reporting and Investigating Child Abuse" (F. Biel); "Emergency Protection of Children--Chapter 17 of the Family Code" (D. Hester); "Protective Conservatorship" (E. Pena); "Legitimation, Adoption and Termination of Parental Rights" (D. Royall); "Child Abuse and Neglect Case Example" (K. Love and G. Ford); "Recognizing Child Abuse" (J. Hebeler); "Offices and Projects Concerned with Child Abuse and Protective Services" (Region VI Resource Center on Child Abuse and Neglect); "State Child Neglect Laws in America" (S. Katz); "Glossary of Legal Terms in Child Abuse Cases" (P. McClung); "Bibliography--Child Abuse and Protective Services" (S. Hall); "Child Abuse and Neglect Forms--Investigation, Emergency Protection and Extended Relief (Conservatorship and Termination)" (W. Schur); and "Child Care Licensing Act of 1975." (SBH)

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IN
TEXAS

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CHILD ABUSE AND PROTECTIVE SERVICES IN TEXAS

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September 1976

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PERSPECTIVES OF CHILD ABUSE AND CHILD PROTECTIVE SERVICES IN 1976

Bill Anderson

I. INTRODUCTION.

A. THE ROLE OF CHILDREN IN WESTERN CULTURE.

1. The Property Concept.

We derive our law from many sources, but in general it is a property law and its roots are found in the early development of western culture.

2. Medieval Period.

Ownership of land was the prerequisite for all individual rights. Through control of the land, a small ruling nobility derived great powers over the majority of people whose livelihood was directly dependent upon production from the land. Under this system, the status of children and adults alike was that of servitude.

3. The Period of Crafts and Guilds.

During this period man began to break his direct ties with the land and he developed methods of group living which grew into the creation of villages. It was demonstrated that wealth lies not only in the ownership of land, but also in the possession of specialized skills. A highly proficient shoemaker received status because of his particular skill. With this development society was forced to re-evaluate some of its concepts toward children. Whereas in an agrarian world the child could assume an adult role very quickly, requiring only physical maturity, the higher intellectual processes and the years of training needed to develop specialized skills made the child an economic liability for a longer period of time.

4. Apprenticeship.

The apprenticeship system was devised in which a child, while receiving an extension of his period of dependency, became at best an indentured servant and at worst a virtual slave. A master had absolute authority over a child apprenticed to him, and while many children were given training under this system, many others were exploited with utter irresponsibility.

Of importance is the fact that the child had no rights under such a system and his fate was totally dependent upon the compassion of his master.

5. The Industrial Revolution.

This period was characterized by the flowering of the dignity of man as his value increased tremendously. The role of the child also changed but was hardly improved, and in some respects may have worsened. True, the child found emancipation from the flax fields of the feudal period; or perhaps from the blacksmith's shop of the crafts period, but often found himself pushing carts through unhealthy and dangerous coal mines or working long hours in dark factories.

B. THE ENGLISH LAW.

Regardless of his new status, the child found no freedom with respect to his civil rights. The law, well grounded in property, gave little attention to the growing child as an individual member of society. In many respects the child was actually regarded as property – the property of his parents. Little attention was given to a parent's natural interest and responsibility toward his child in a social relationship, but instead focus was upon the child's economic potential to produce, with fruits of his production going to his parents.

Under the laws of England, no recognition was given to a child as an individual except through a property relationship to his parents. Children were personal property subject to complete manipulation of their parents, and in their absence had no protection whatsoever in an often hostile society. Vestiges of these property rights remain in today's law in what is regarded as parental rights; for example, the right of a parent to the earnings of his child.

1. Orphans' Courts.

   In the medieval boroughs of England, orphans' courts arose which took jurisdiction over both the persons and the estates of fatherless children for whose custody no provision had been made by will. It was accepted that guardianship was a governmental obligation established for the child's good.[1]

2. Chancery Courts.

   Chancery courts grew out of the powers of equitable jurisdiction delegated to the Chancellor, "the keeper of the conscience of the King". This included the power to issue decrees in cases where adequate relief could not be had at Common Law. The court of chancery could appoint guardians on petition. The only route to the court was a property-route, but when jurisdiction was invoked, the court could provide protection to a child's person as well as to his estate. These courts are considered the forerunners of today's juvenile courts.

II. THE ETIOLOGY OF PROTECTIVE SERVICES.

A. DEPENDENCY AND NEGLECT LAWS.

In the late nineteenth century, an English lady, Mary Carpenter, undertook a crusade on behalf of her country's "ragged and miserable" children. Her efforts resulted in persuading the Parliament to provide for a petition alleging dependency and neglect. She toured the United States in the late seventies and scolded Americans for their failure to pass similar acts. Legislation was soon enacted in several states providing supra-parental powers to the states under the old chancery concept.[2]

B. IN THE CASE OF MARY ELLEN.

Up to the last decade of the nineteenth century there were no organized protective service programs for children in the United States. Some private agencies were functioning at that time but they were unaided by statutes.

The incident of an abused child, Mary Ellen, led to an attempt by a church worker to invoke the jurisdiction of the court to intervene on behalf of the welfare of the child. A case was filed under a cruelty to animals law alleging that the child was a member of the animal kingdom. The court agreed and stated:

> The child is surely an animal. If there is no justice for it as a human being, it shall at least have the rights of the cur in the street.[3]

1. Societies for the Prevention of Cruelty to Children.

Laws were enacted and a society for the protection of children was formed in New York in 1875. The Texas Legislature in 1913 established the State

Bureau of Child and Animal Protection with the goal "to secure enforcement of laws for the prevention of wrongs to children and dumb animals."

C. INSTITUTIONAL CARE.

1. The Almshouse.

In England the "almshouse" existed for the care of children who were handicapped, too young, or unacceptable as an apprentice due to behavior. The writing of Charles Dickens vividly portrays the lot of children under this system.

2. Orphans' Homes.

In the early history of America another type of institutional care was developed for orphans and children of poor or disabled parents. The purpose was to support, maintain and educate such children. The first recorded orphanage was established by Ursuline Nuns in New Orleans in 1729 to care for children who lost their parents in Indian raids. The first public home was established by the city of Charleston, South Carolina, in 1790.

The almshouse system had in large been replaced by custodial institutions in the latter half of the 19th century.[4]

D. OUTDOOR RELIEF.

Late in developing was another form of protection for children referred to as "outdoor relief". The White House Conference of 1909 recommended that children not be removed from their homes for reasons of poverty alone. This led to the adoption of Mother's aid laws to assist "fit" mothers to maintain dependent children in suitable homes. The first statute was passed in 1911 in Illinois followed by 39 other states by 1921.

Texas did not participate until the passage of the Federal Social Security Act of 1935 which provided in part grants-in-aid for child welfare services to be extended for "the protection and care of homeless dependent and neglected children and children in danger of becoming delinquent".

E. CHILD LABOR.

1. In Agriculture.

Child labor is a world wide tradition and is as old as history. Children have always played a vital role in an agricultural economy. Such labor has been primarily a family affair and has not been associated with neglect or abuse. The tradition for agricultural child labor remains strong until this day and the chief concern where it exists is that the child is deprived of an adequate education.

2. Industrial.

Another aspect of child labor, much more vicious to the child, grew out of the Industrial Revolution and has its tradition in the apprenticeship system and the "poor laws" of England. The early industrial movement required a huge reservoir of unskilled labor and employment of vast numbers of children was common. This was especially true in coal mining areas, in textile mills and the homebound garment industry.

Public concern about child labor began to develop around education, health and safety of child workers. As job competition became severe, child labor was viewed as cheap competition for adult workers.

3. Early Child Labor Laws.

Early laws which began in the early part of the 19th century usually limited the hours of child labor and required some educational opportunity. Federal intervention into child labor practices took place during the great depression when job competition was intense and culminated in the passage of the Labor Standards Act of 1938. Emphasis was not upon the employment of children but employment in "harmful" activities.

4. Texas Child Labor Laws.

Texas enacted a number of child labor laws during this period usually placing restrictions on the employer in the hiring of children. The Texas laws as well as those of other states have loop-holes such as the "widowed mother" exemption which have resulted in little enforcement of the standards. On the other hand, child labor abuses have greatly diminished due to school attendance laws, employee insurance regulations and child neglect laws. In all probability, the most significant factor in reducing child labor is the competition with adult workers in a period of high unemployment coupled with minimum wage laws.

5. Migrant Farm Labor.

A recent child labor concern in Texas was in regard to children of migrant farm workers. Mechanization of agriculture has diminished this problem. It was a change in technology which fostered child labor in the last century by demanding unskilled workers. It now appears that further technological changes will mitigate the problem since the labor demands of the future indicate a need for highly skilled technicians requiring an extension of the time needed to educate a child.

F. CHILD HEALTH CARE.

In early America health care of children was a major concern. Mortality rates for children ranged as high as fifty per cent. The public health movement got underway in the late 19th century and resulted in the establishment of state boards of health. This movement soon focused upon health needs of children.

1. Vaccination.

Widespread vaccination against smallpox was the first significant movement in children's health.

2. Safe Milk.

Safe milk was an early concern and by 1910 the pasteurization program was underway.

3. Medical Inspection.

The public role in the detection and control of illness in children began at the turn of the century as medical inspection programs were initiated in the schools.

4. The Role of the Federal Government.

The Federal Government entered the field in 1912 with the establishment of the Children's Bureau. The Bureau provided information and guidance to state health agencies until 1921 when Congress passed the first grant-in-aid in health matters promoting better maternity and infant care.

During the first half of this century, other vaccination programs developed, public health nurses grew in number, crippled children's programs were established and child nutrition programs were developed.

5. Current Health Programs.

In 1969, the Children's Bureau was transferred to the Office of Child Development. Also involved in children's health is the Public Health Service. These agencies, among others, provide screening, diagnosis and treatment for children of low income families.[5]

G. CHILD NEGLECT.

1. Legal Basis of Neglect.

The Texas statutes do not provide a definition of neglect, but specify as grounds for loss of parental rights those circumstances where parents:

> knowingly place or knowingly allow the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child. TEX. FAMILY CODE ANN., sec. 15.02 (c).
>
> or
>
> engage in conduct or knowingly place the child with persons who engage in conduct which endangers the emotional well-being of the child. F. C., sec. 15.02 (D).

2. Standard of Neglect.

Neglect – the meaning of the standard is given by community minimums in regard to family conduct . . . the parent who 'neglects' falls below the very minimum of acceptable parental behavior.[6]

3. Behavior Constituting Neglect.

Courts have terminated parental rights for a wide variety of behavior including: physical abuse, emotional abuse, cruelty, denial, habitual drunkenness, failure to provide or permit necessary medical care, misconduct which adversely affects the welfare of a child and failure to provide necessaries when fundamental welfare of child is threatened.

III. THE CONCEPT OF GUARDIANSHIP.

A. PARENS PATRIAE.

Chancery guardianship was understood to be an exercise of the supra-parental power of the state known as 'parens patriae' (parenthood of the State). This ancient power through which the state exercises a parental role through its judicial processes has been described as follows:

> The powers of government in all civilized nations include what is known as police power. Within that power there has developed, among other governmental functions, one known as guardianship. In brief, guardianship by the state in children's cases means the assumption by the government of certain powers and obligations which normally are exercised by parents. Although available in the case of any child, this power may actually be exercised only in accordance with certain well-formulated procedures. The agent of the state in guardianship matters is a guardianship court and the proceedings are judicial.[7]

B. GUARDIANSHIP IN TEXAS.

The foundations of guardianship of Texas' children are found in Anglo-Saxon law. When the Republic of Texas adopted the Common Law of England in 1840 it brought to Texas jurisprudence the powers of the English Orphans' and Chancery Courts which had been developed early in the 19th century. The Texas Supreme Court in 1857 ruled that the courts of Texas may administer equity as fully and completely as a court of chancery of England, without the aid of statute. Grassinger v. Beeson, 18 Tex., 753 (Tex. Sup. Ct., 1857).

1. Apprenticeship.

The Texas Legislature in 1848 provided for the apprenticeship of Texas children. Apprenticeship remained in the Texas statutes until they were repealed by the present Family Code. Apparently they were seldom used in this century.

An orphan who had no estate could be bound to a master until the age of majority. The court had continuing jurisdiction in such cases, and in some ways, the action was similar to modern child custody cases. The master was required to do little for his ward and widespread abuse of children under this system resulted in such children being referred to as "little slavey's". The only recourse the child had when abused was to sue the master upon reaching the age of 21.

2. Adoption.

The Common Law made no provision for adoption. Adoption was known in the United States as early as 1850, but it was not until after World War I that it had significance for neglected children. In the 1920's adoption agencies began placing homeless children.

In Texas, adoption was known following legislation in 1850, but it was considered a private matter, and adoption was consummated by registration "as of a deed" or through a "will". After adoption through "deed" the parents could successfully apply to regain custody unless the adoptive parents could prove the natural parents unfit. State ex rel. Wood v. Deaton, 535 W. 901 (1900).

In 1931, the Legislature placed full guardianship powers in adoption cases with the District Courts. TEX. CIV. STAT. ANN., art. 46a, 1931.

3. Children Under Guardianship.

   a. Children of Unsound Minds.

      Early probate law made children of unsound minds wards of county courts. *Grassinger v. Beeson*, 18 Tex. 753 (1857).

   b. In Divorce.

      Through habeas corpus proceedings children in divorce cases and in cases of improper custody were made subject to guardianship in 1857. *Ibid*.

   c. In Epilepsy.

      In 1899, guardianship was extended to include children with epilepsy. GEN. LAWS OF TEX., p. 46 (1899).

   d. In Neglect.

      The Texas Juvenile Dependency and Neglect Act of 1907 greatly expanded guardianship powers of the State. G. L. T., p. 135 (1907).

   e. "Feeble-minded" Children

      These children were included in a 1915 statute. G. L. T., p. 143 (1915).

   f. Adoption.

      Children placed in adoption were added in 1931. G. L. T., p. 300 (1931).

   g. Delinquent Children.

      The last class of children to be brought under guardianship laws were delinquent children in 1943. Prior to that time delinquents were tried in criminal court. TEX. REV. CIV. STA. ANN., art. 2338-1 (1943).

C. RIGHTS OF PARENTS.

1. Equal Rights.

Separated parents have had equal rights over their children in Texas since 1876. "Where parents are separated, their rights are equal." GEN. LAWS OF TEX., p. 175 (1876).

The "best interest of the child" has been the rule to resolve the equal rights question. "Minor children shall be assigned to one or the other of the parents taking into consideration the interest of the child alone." TEX. CIV. STA. ANN., art. 4118 (1975).

2. Parental Rights.

When two parents with equal rights compete for custody in a divorce suit, the best interest concept is before the court. However, in an action by the State to terminate parental rights of a dependent or neglected child, the oppositional concept of parental rights must be considered. These parental rights are the residuals of parents' property rights under the English law. Also embraced by this concept is the State's interest of keeping the family unit whole. Philosophically, the rights of parents go to the roots of fundamental law and transcend property rights. As such, it is inherent and derives from the nature of the parental relationship. However parental rights are not absolute and the State has a superior right to intervene against neglect and abuse of parental authority. It has been a long accepted fact of Texas law that parental rights must be terminated either voluntarily by the parents or upon a finding of unfitness by the court, before the best interest concept may be considered.

D. BEST INTEREST OF CHILD.

No controlling guidelines exist on what constitutes the best interests and welfare of a child. The American Bar Association polled members of its Family Law Section for those aspects of family life constituting "best interest".[8] The response categories according to frequency of response were:

. . . emotional and physical health of parents
. . . preference of child
. . . physical environment
. . . economic environment
. . . interest and interrelationship with parents
. . . siblings and other persons who may significantly affect child's best interest
. . . moral and spiritual training
. . . home with love and affection
. . . educational needs and opportunities
. . . necessaries - meals, clothing, health care, employment and work hours of parents, and supervisory provisions.

E. RIGHTS OF PARENTS.

1. Status of Children in Past.

In a primitive society where the child grows up with a sudden abruptness, "rights" do not seem important. In our complex society with its extended period of adolescence based upon our employment and educational system, rights acquire new meaning.

Under the English law, children had few articulated rights and those that did exist such as "right to the surgeon" seldom were observed due to the unwieldy legal machinery. Children were considered as chattels of the family unit with no separate status.

Under the concept of parens patriae, little attention was given to children's rights in that the focus was upon the right of the parent or the right of the state to provide for and supervise the child.

2. The Trend Toward Children's Rights.

Primarily since World War II, a movement has developed to extend the rights of minors to make certain decisions concerning their own interests. This movement gained great momentum during the 1960's when young people found ways to address the courts and the courts began to render decisions in their favor. This was followed by legislative response.

A case in point is in regard to medical care. Prior to the passage of the Texas Family Code a minor could consent to medical treatment in a few limited instances. Parental consent was required (English law), or in the absence of parents or upon their failure to consent, the court could consent (parens patriae). The Family Code enlarged the area in which the minor himself could consent to medical treatment. F. C., sec. 35.03.

Among other rights enjoyed by minors are:

a. the right to counsel and certain other protections under the Bill of Rights. In re Gault, 387 U.S. 1 (1967).

b. the right to a guardian ad litem in parental termination proceedings. F. C., sec. 11.10.

c. the right to a free public education. TEX. EDUCATION CODE.

d. the right to treatment. See Bernbaum, 46 A. B. J. 499 (1910).

IV. THE PROTECTIVE SERVICES SYSTEM.

A. GUARDIANSHIP COURTS.

District Courts are constitutional courts with jurisdiction of all family law matters. They also have powers over all minors granted under Article 5, Section 8, of the Texas Constitution.

Domestic Relations Courts – The first such court was created in Potter County in 1944. These statutory courts, created under Article 5, Section 1, of the Constitution, have the powers granted under the enabling act which created them, but generally they have the same jurisdiction in family law as district courts.

Juvenile Courts – Two Texas counties have statutory juvenile courts, those being Dallas and Harris. The other counties have either a domestic relations court or have a district court or county court designated as the juvenile court. County juvenile courts have delinquency jurisdiction and district juvenile courts and domestic relations courts have full jurisdiction of family law matters.

Guardianship courts sit in equity. The jurisdiction is broad, comprehensive and plenary.

B. JUVENILE BOARDS.

The guardianship functions of the State are scattered among the many district, county, statutory juvenile and domestic relations courts. The need for coordinated administration has long been recognized. With this in mind, the Legislature in 1917 created juvenile boards in the largest counties. Since that time many juvenile boards have been created, some by statutes applying to specific counties and many by general bracket legislation.

Juvenile boards usually consist of the district judges and the county judge of a county. In some instances, the statutory juvenile judge or domestic relations judge serves.

The nature of a juvenile board has been judicially defined:

> It is an administrative body for the further carrying out of the District Courts' general control over minors given by Article 5, Section 8, of the Constitution. Cheney v. Cheney, 82 S. W., 2nd 1024ff (1934).

C. JUVENILE PROBATION OFFICERS.

These officers are appointed by juvenile boards or in their absence by commissioners' courts or by county judges. The bulk of their work is to aid the juvenile court through social investigations and casework with children and their families. The Legislature permissively provided for such officers in 1907, and enacted a number of bracket laws beginning in 1919 authorizing their appointments. Until recently most protective services were provided by such officers and they are still involved to a considerable degree. However since the Social Security Act was amended in 1962 to include services to large cities, much of the burden has been assumed by child welfare workers.

D. CHILD WELFARE BOARDS.

These local boards were created by the Legislature in the same Act that created the State Division of Child Welfare. Such boards were made up of citizens appointed by commissioners' courts and noted for their "leadership and concern for children". Their principal role in the beginning was advocacy for children's services, especially public services. In time they became quasi-regulatory, acting as a liaison between the State Department of Public

Welfare and county commissioners' courts. Even though the Child Welfare Division has been abolished and children's services are provided on a regional service design by the Department of Public Welfare, more than 100 boards throughout Texas continue to function. Their purpose remains as child advocacy and many of these boards advise commissioners' courts in regard to budget needs for child care.

E. CHILD WELFARE WORKERS.

The name goes back to a prior time when there was a State Child Welfare Division. These are social workers employed by the State Department of Public Welfare who have the basic responsibility for protective services. They work out of the regional offices and may serve one county or a number of less populated counties. They provide direct service to the entire State with the exception of Wichita County where a local family court unit performs under contract with DPW.

F. TITLE XX.

The Social Security Act was amended in 1975 to reorganize traditional child welfare servies. Services include:

Supportive services to children in their own homes, such as:

. . . mental health
. . . family agency services
. . . protective services
. . . casework services
. . . AFDC program.

Supplementary services such as:

. . . day care
. . . home worker service
. . . income maintenance program.

Substitute care services such as:

- . . . family care
- . . . adoption
- . . . institutional child care.

G. SHIFTS IN EMPHASIS IN SERVICES.

The decreasing birthrate seems to be offset by an increasing number of children in poverty and in single-parent families indicating a larger proportion of a more limited group will require services. Death of parents is no longer a major factor; but problems relative to emotional disturbance, school adjustment, teenage identity crisis, illegitimate births among teenagers and family planning now consume more services. With fewer children available for adoption, emphasis is now upon adoption of older children, the handicapped and children of racial minorities. Birth control, abortion and changing attitudes toward illegitimacy have reduced the use of maternity homes. The need for foster care and institutional care is increasing. Children's health care, especially dental care, remains a major concern. The physically abused child is now a top priority in child welfare programs.

V. THE LEGAL RESPONSE TO CHILD ABUSE.

A. THE TEXAS FAMILY CODE, TITLE 2.

1. Child Abuse.

A suit affecting the parent-child relationship is the basic tool in dependency and neglect cases. F. C., Ch. 11.

2. Authorized Agency.

An authorized agency is a public or private agency authorized to care for children. Sec. 11.01 (7).

3. Report of Child Abuse.

Reports of child abuse are mandatory and the authorized agency is required to investigate and report to the court. F. C., Ch. 34.

4. Protection of Child in Emergency.

When an immediate danger threatens a child's physical safety, certain officers may take possession of the child to be taken immediately before a court. F. C., Ch. 17.

5. Any Issue May Be Determined.

The broad range of powers and duties delegated to district courts having original jurisdiction and general control over minors conferred by the Texas Constitution, Article V, Section 8, makes it possible for the court to rule on any matter affecting the parent-child relationship. F. C., Sec. 11.02 (b).

6. Standing.

Any person with an "interest" in the child, or any state or local agency, and the child, through next friend, may bring the suit affecting the parent-child relationship.

7. Guardian Ad Litem.

A guardian ad litem must be appointed to represent the child in any suit to terminate parental rights. F. C., Sec. 10.10.

8. Social Study.

The court may order the preparation of a social study in a suit affecting the parent-child relationship and a social study is required in adoption cases. F. C., Sec. 11.12.

9. Rights of Parents.

Prior law did not clearly specify rights and duties of parents. These are described in the Family Code. Sec. 12.04.

10. Paternity.

The rule that a child is the legitimate child of the mother is retained. Legitimation on the part of the father may be by a statement of paternity, Sec. 13.01, or by a suit to establish paternity. TEXAS LAWS, Ch. 476, Sec. 24 (1975).

11. Best Interest of Child.

The best interest of the child is the rule to be applied by the court in determining matters concerning the child. F. C., Sec. 14.07.

12. Termination of Parental Rights.

A termination suit is new to Texas law and embodies the philosophy "that the relationship between parent and child is of such vital importance to the state that judicial action is required to terminate that relationship." F. C., Ch. 15.

13. Licensing.

To prevent the abuse of children removed from their homes, the Legislature has charged the State Department of Public Welfare to establish minimum standards for the safety and protection of children and through a program of licensure, certification or registration of child care facilities insure maintenance of these standards. TEX. REV. CIV. STAT. ANN., art. 695-3.

VI. SUMMARY.

The protective services program of 1976 is a marriage between law and the behavioral sciences. Judges consider facts of sociology and psychology as well as matters of law, and social workers work within a framework of law. Many of the elements of the system are more the result of historical accident than rational design. However, in reviewing the developments of the past one hundred years, one trend emerges - the relentless move to abandon the concept of the child as chattel and to recognize him as a person and as a citizen. Legal ties recognizing the deep psychological and social relationship between parent and child remain, but on a new plane, preserving the individual dignity of each party.

FOOTNOTES

1. *Texas Children*, THE REPORT OF THE TEXAS CHILD WELFARE SURVEY, Univ. of Texas (1938).

2. *Ibid*.

3. M. Paulson, *The Delinquency, Neglect and Dependency Jurisdiction of the Juvenile Court*, in CHILD NEGLECT AND DEPENDENCY, National Council of Juvenile Court Judges (1973).

4. See *Texas Children*, Supra.

5. For a complete review of federal programs, see *Children Today*, U. S. Department of Health, Education and Welfare, Vol. 5, No. 3 (1976).

6. See Paulson, Supra.

7. See *Texas Children*, Supra.

8. 2 FAMILY LAW REVIEW 2719 (8-31-76).

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REPORTING AND INVESTIGATING CHILD ABUSE

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September 1976

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REPORTING AND INVESTIGATING CHILD ABUSE

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REPORTING AND INVESTIGATING CHILD ABUSE

Frederick John Biel

I. INTRODUCTION.

This article is an analysis of Chapter 34, Report of Child Abuse, Texas Family Code, as amended, and the procedures adopted by the State Department of Public Welfare for carrying out its responsibilities under the provisions of that Chapter.

It is the desire of the author to present an analysis that reflects a practical, reasoned approach to the subject matter; it is hoped that this article will be of benefit not only to protective services staff, judges, and county and district attorneys, who are involved with protective services cases, but also to the lawyers of this state who represent persons with an interest in a child who is the subject of a Chapter 11, Chapter 15, or Chapter 17 suit brought by the department under the provisions of the Texas Family Code.

A. SCOPE OF ARTICLE.

This article is not intended to serve as a document tracing child abuse and neglect legislation throughout the United States from its beginnings to its present evolution, nor is it intended to focus on reasons why the authors of Chapter 34 acted as they did in drafting the legislation, nor is it a study of the pros and cons of enacting a reporting statute. This article is intended to be a "1-2-3" analysis of a reporting statute and how an agency has responded to its responsibilities under that statute. The author wishes to express his sincere appreciation to all persons who provided input for the final work-product.

B. ARTICLE SOURCES.

Two primary written sources were consulted throughout the development of the article. They were the Texas Family Code, Chapter 34, Report of Child Abuse, and the State Department of Public Welfare's Social Services Handbook. The Texas Family Code needs no introduction; however, the department's Social Services Handbook is probably less familiar to some readers of this article.

The Social Services Handbook is the operational manual of the State Department of Public Welfare in administering its social services programs. One section of that manual, Section 7000, "Child Welfare Services," hereinafter referred to as Section 7000, in approximately 140 pages, sets out the official policy regarding the department's handling of child welfare services in the State of Texas. The 7000 Section is recommended reading for any person who works with department staff on a routine basis on child welfare cases.

The Social Services Handbook, up-dated as department policies change, can be obtained by contacting any department representative in a local department office, or by writing the Assistant Commissioner for Coordination, State Department of Public Welfare, John H. Reagan Building, Austin, Texas 78701. A fee is charged for the Handbook.

II. DEVELOPMENT OF THE TEXAS REPORTING STATUTE.

In a span of four legislative years, all 50 states enacted laws seeking reports of injuries on children. The rush to go on record on behalf of child victims of abuse began ...in 1963.[1]

A. THE 1965 TEXAS REPORTING STATUTE.

The first child abuse and neglect reporting statute in Texas was enacted in 1965.[2] It provided a permissive reporting by a physician, of an injury to a child under 18 years of age, to the judge of the juvenile court, the district attorney, the county attorney, the local law enforcement agency, or the probation officer of the county, if the physician believed that the injury was other than accidental and that the injury was due to maltreatment or neglect. The physician was protected from civil and criminal liability for reporting in accordance with the statute.

B. 1969 LEGISLATIVE AMENDMENTS.

In 1969, the Texas Legislature amended the reporting statute and expanded its scope.[3] Eight categories of persons were listed to report any observance or treatment of a child suffering from injuries suspected to have been inflicted by other than accidental means, or a child who appeared to be suffering from physical neglect, to the county attorney of the county in which the child resided or to the Regional Department of Public Welfare, Division of Child Welfare. The list of persons included: (1) any licensed physician staff member of a medical institution, (2) intern, (3) registered nurse, (4) school teacher,

(5) nursery school director, (6) social worker, (7) coroner or (8) peace officer. The reporting of such abuse and neglect, however, remained permissive.

The Purpose Clause of the 1969 amendments to the reporting statute included the following language:

> It is the intent of the legislature that, as a result of such reporting, protective social services shall be made available through the office of the nearest director of child welfare services in an effort to prevent further abuse and neglect, and to safeguard and enhance the welfare of such children and preserve family life whenever possible.

Additional provisions in the 1969 amendments removed the husband-wife privilege as a basis for exclusion of testimony in any judicial proceeding resulting from a report made pursuant to the statute; provided for the county attorney to accept and maintain a file of the reports made to his office, to be responsible for implementing the recommendations of the local director of the county child welfare unit, and to take whatever legal measures were necessary to protect the child, including temporary or permanent removal of the child from his home; the creation of a Central Registry in Austin, Texas to be established by the State Department of Public Welfare to provide for cooperation with local social service agencies, and with other states in exchanging reports to effect a national registration system; and a provision for immunity from civil and criminal liability for any person who made a report without malice.

C. 1971 LEGISLATIVE AMENDMENTS.

The forerunner of our present child abuse and neglect reporting statute was enacted in 1971.[4] Major changes from previous reporting legislation included:

(1) Mandatory reporting requirement by any person having cause to believe that a child's physical or mental health or welfare has been or may be further adversely affected by abuse or neglect.

A "person" was defined as any individual, firm, partnership, joint stock company, joint venture, association, corporation, or city, county, and state law enforcement agencies.

(2) Reports were required to be made to the

County Child Welfare Units, or to the county agency responsible for the protection of juveniles, or to any local or state law enforcement agency.

Oral reports were to be made immediately upon the learning of the abuse or neglect, with a mandatory written report to follow within 5 days.

(3) The waiver of privileged communications was extended to any professional person or organization and their clients, except lawyers.

The list of such professional persons and organizations included physicians, ministers, counsellors, hospitals, clinics, daycare centers, and schools.

(4) Detailed statutory provisions regarding the conduct of the investigation and a mandatory written report of the results of said investigation were to be made to the juvenile court of the district court, the district attorney, and the appropriate law enforcement agency.

D. 1973 LEGISLATIVE AMENDMENTS.

In 1973, Article 695c-2, Vernon's Texas Civil Statutes, was repealed, effective January 1, 1974, and the stautes governing the reporting of child abuse and neglect were codified in Title II, Chapter 34, Report of Child Abuse, in the Texas Family Code. Major amendments and changes to the reporting statute in 1973 included:

(1) Mandatory reporting was enlarged to include (1) on three or more occasions violations of the compulsory school attendance laws and (2) on three or more occasions, voluntary absences from the home without the consent of the parent or guardian for a substantial length of time or without the intent to return.

(2) A removal of the definition of person.

(3) Section 9 was added, effective June 13, 1973. This new section made failure to report instances of child abuse a misdemeanor punishable by a maximum fine of

$500 and/or imprisonment for a maximum of six months.[5]

The penalty provision was not part of Title II, Texas Family Code, as passed by the Legislature on May 24, 1973. Attorney General John Hill, in an Opinion[6] requested by Raymond W. Vowell, Commissioner of Public Welfare, relied on Section 3.11(c) of the Code Construction Act[7], wherein General Hill ruled that Section 9 was not repealed by Title 2 of the Texas Family Code.

Section 3.11(c) of the Code Construction Act provides that the repeal of a statute by a code does not affect an amendment, revision or reenactment of the statute by the same legislature which enacted the code. The amendment, revision or reenactment, is preserved and given effect as part of the code provision which revised the statute so amended, revised, and reenacted.

III. SECTION BY SECTION ANALYSIS OF CHAPTER 34, TEXAS FAMILY CODE.

Last year, in Texas, the department received over 125,000 reports pursuant to Chapter 34, Texas Family Code.[8] It is estimated that approximately 11,500 children annually must be removed from their homes in Texas, for their protection, by court order placing managing conservatorship with the department; however, the majority of children on which the department receives a report pursuant to Chapter 34 remain in their homes, where statewide, 2800 social workers and supporting department staff, are available to assist and work with the child and his family. In comparison, the Division of Child Welfare, in May, 1932, boasted a staff of four persons.[9]

The present provisions of Chapter 34 in Texas have evolved from eleven years of experience in working with the statute. Let's look now at each section of this reporting statute and analyze its provisions.

A. SECTION 34.01. PERSONS REQUIRED TO REPORT.

The reporting statute requires "any person" having cause to believe that a child's physical or mental health or welfare has been or may be adversely affected by abuse or neglect to report in accordance with Chapter 34.

The definition of "person" is obtained by reliance on the Code Construction Act[10] which defines "person" as including a corporation, organization, government or governmental subdivision or agent, business trust, estate, trust, partnership, association, and any other legal *entity. From that definition, one is led to believe that* the framers of the reporting legislation meant to cover the whole gambit of legal entities[11], as well as the usual connotation of person as a human being.

> Enlarging the class of persons required to report to include "any person" has given rise to concern on the part of some that there will necessarily be a proliferation of "unfounded reports." Inherent in this concern is the fear that innocent people may be reported as abusing parents. That there would actually be any appreciable increases in malicious or intentionally false reporting is to be seriously doubted. Moreover, safeguards in the form of procedures for thorough and careful investigation, and for expungement of records can minimize this danger. On balance, ...the benefits of early casefinding and earlier treatment made possible by requiring any person to report far outweigh the potential dangers.[12]

The definition of "abuse" or "neglect" is more elusive. The Texas Family Code does not contain specific definitions for the terms. The author believes it is beyond the scope of this article to explore the definitions of the terms to the extent he believes desirable; however, several observations regarding the terms are in order.

The American Bar Association Section of Family Law in a recent publication[13] attempted in part to define the terms as follows:

> Child Abuse - the intentional, non-accidental use of physical force that results in physical injury serious enough to endanger the health and life of the child....
>
> "Neglect" is an uncertain concept both legally and in social application. Its most obvious definition is a chronic failure by adults to protect children from obvious physical danger. Since standards are available for determining when malnutrition, disease, lack of clothing, shelter, and inadequate supervision endangered a child's life and health, the statutory definition of neglect has long been in physical

> rather than psychological terms. But the concept of "neglect" can also include the failure to ensure the positive social and psychological development of the child under this definition.... Broadly speaking, then, child neglect occurs when the dominant expectations for parenthood are not met - when a parent fails to provide for a child's needs according to the preferred values of the community.

The department, in its Section 7000 defines abused or neglected children in the following manner:

> Abuse is defined by the Department as non-accidental infliction or threat of infliction of physical injury or emotional or mental damage to a child by a person responsible for the child's health or welfare. Abuse can also involve withholding of needed care for the child. Abuse is usually corroborated by medical, psychiatric or psychological personnel. Examples of abuse include burns, fractures, bruises, welts, sprains, exploitation, confinement, poisoning, exposure, starvation, malnutrition, sexual abuse, withholding of needed medical attention, etc. Exploitation of a child exists when the child is forced or unduly encouraged to participate in activities detrimental to his well-being, such as begging, stealing, exposure to immoral or degrading circumstances, inappropriate role responsibilities and working too hard for too many hours. Sexual abuse of a child exists when any sexually oriented act or practice by a person responsible for the child threatens or harms the child's physical, emotional, or social development. Examples of sexual abuse include fondling, sexual intercourse, sexual stimulation, sodomy, incestuous family relationships, rape, etc.
>
> Neglect is defined by the Department as depriving a child of living conditions which provide the minimally needed physical and emotional requirements for life, growth and development by a person responsible for the child's health or welfare, e.g., inadequate food, inadequate housing and clothing, lack of needed medical attention, abandonment, lack of supervision or guidance, unmet

educational needs, etc. Medical neglect may not be considered in the following instance: "A parent or guardian legitimately practicing his religious belief who thereby does not provide specified medical treatment for a child for that reason alone shall not be considered a negligent parent or guardian; however, such an exception shall not preclude a court from ordering that medical services be provided to the child where his health requires it." Code of Federal Regulations, Title 45, Subtitle B, Chapter XIII Section 1340, 1-2(b)(1).

It can be argued that the framers of the reporting legislation did in part speak to grounds for allegations of abuse or neglect in the Texas Family Code when they provided that a parent under Section 12.04, Title II, Texas Family Code, has certain responsibilities toward his child(ren) which include the duty of care, control, protection, moral and religious training, and reasonable discipline of the child; and the duty to support the child, including providing the child with clothing, food, shelter, medical care and education. Managing and Possessory Conservators under Chapter 14, Title II, Texas Family Code, have similar responsibilities toward a child. The responsibilities, when unmet, form the basis for allegations of abuse or neglect.

In addition to a requirement of reporting abuse and neglect, a person has the responsibility to report a child who (1) has violated the compulsory school attendance laws on three or more occasions or (2) has on three or more occasions been voluntarily absent from his house without the consent of his parent or guardian for a substantial length of time or without the intent to return or (3) has died of abuse or neglect.

Finally, notice that the responsibility of reporting is not limited to completed acts of abuse or neglect; if a child's physical or mental health or welfare may be adversely affected by abuse or neglect, a person is required to report in accordance with Chapter 34. (Emphasis added.)

B. SECTION 34.02. CONTENTS OF REPORT: TO WHOM MADE.

The reporting statute lists groups to whom reports under Chapter 34, Texas Family Code can be made. These include:

- State Department of Public Welfare
- The agency designated by the court

to be responsible for the protection of children

- Any local or state law enforcement agency

Reports received by local or state law enforcement agencies, by statute, are required to be referred to the State Department of Public Welfare or to the agency designated by the court to be responsible for the protection of children.

With only minor exceptions, the State Department of Public Welfare is the agency that has been designated by the court to be responsible for the protection of children. This can be explained by the fact that as a result of an amendment to the Social Security Act, making available additional federal funds, the department is operating a statewide system of protective child welfare services.

The department maintains a statewide child abuse hotline which is a toll-free telephone system (1-800-292-5400) for reporting children in need of protection. Reports to the hotline are referred to protective services staff in the field for disposition. A report can also be made to any office of the State Department of Public Welfare for referral to appropriate department staff.

The reporting statute provides that the report is non-accusatory in nature and reflects the reporter's belief regarding the condition of a child. In other words, the person reporting is not required to name a person whom he suspects is responsible for the abuse or neglect inflicted on the child. This is in keeping with the philosophy and purpose of enacting reporting laws, i.e. "...the core objective is early identification of children who have been physically abused, so that they can be (1) treated for injuries and (2) protected from further abuse."[14] The reporting statute contemplates that the person making the report will identify himself; however, the reporting statute includes language to the effect that anonymous reports, while not encouraged, will be received and acted upon in the same manner as acknowledged reports.

At a minimum, all reports must contain the name and address of the child, the name and address of the person responsible for the care of the child, if available, and any other pertinent information. The general phrase "any other pertinent information" allows the reporter to provide additional information to assist the agency in the investigation of the report.

An oral report is required to be made immediately on learning of the abuse or neglect, with a written report to be made within 5 days to the same agency. The Department maintains a supply of forms[15] which are available to the public for use as a written report to the department.

> The usual reporting process prescribed in these laws (child abuse or neglect) sets up a roadblock to free reporting. This is because of insistence that the immediate oral report be followed by a written report.
>
> Serious reservations are raised about the validity of the written follow-up report as a requirement in all cases. When the reporting source is an agency, a hospital or other institution, the written report is well warranted for it would pull together knowledge and data possessed, possibly, by a number of individuals in that agency. Besides, an institution such as a hospital, a clinic, a social agency or a school should accept responsibility for going "on record." A written report does exactly that -- it puts the reporting source on record.
>
> However, when the reporter is an individual, and he is reporting as an individual, there will inevitably arise a considerable amount of reluctance to going on record. This would apply with equal force regardless of whether the reporter is a professional person or not. As a matter of fact, a doctor, the usual target professional in reporting laws, who is sensitive about his image in the community would be more likely to prove reluctant about sending a written report to a public agency. We strongly suspect that this single requirement in the law is largely responsible for the low incidence of reports from doctors in private practice. The probability of more frequent reports from private practitioners would, we think, be greatly enhanced if their reporting could be made orally without the written follow-up. In this manner they would be relieved of the time-consuming burden of the written report and of the necessity of creating a permanent record in the possession of a public agency. Realistically, this would be a step toward making it easier for a doctor to report.[16]

C. SECTION 34.03. IMMUNITIES.

An important element of the law (reporting

> statute) is the provision which grants immunity to those reporting under the act. The immunity is against the possibility of criminal or civil action as a consequence of having made the report. The medical profession, a special target group in the law, thinks itself particularly vulnerable to lawsuits without such protection. Thus, inclusion of immunity provides some freedom from fear of retaliation by angry and, frequently, disturbed parents.
>
> All fifty states, the District of Columbia, Guam and the Virgin Islands include an immunity clause in their law.[17]

The Texas provision extends immunity to participation in any judicial proceeding resulting from the report; however, persons reporting in bad faith or malice are not protected by this section.

Black's Law Dictionary defines the terms as follows:

> Bad Faith -- The opposite of "good faith," generally implying or involving actual or constructive fraud, or a design to mislead or deceive another; or a neglect or refusal to fulfill some duty or some contractual obligation, not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive. (Citations omitted.)
>
> Malice -- The intentional doing of a wrongful act without just cause or excuse, with an intent to inflict an injury or undue circumstances that the law will imply an evil intent.
>
> A conscious violation of the law (or the prompting of the mind to commit it) which operates to the prejudice of another person. A condition of the mind showing a heartless disregard of social duty and fatally bent on mischief. (Citations omitted.)

While a person is immune from civil and criminal liability, a person is not immune from suit. In other words, a person may be subjected to the expense of litigation for reporting in accordance with Section 34.01, Texas Family Code; however, civil remedies may be available to the person to recover his damages in such litigation.

In recent months, the department has received an increasing number of requests for the names of persons who have reported suspected cases of abuse or neglect, wherein such persons allege that the department, by withholding the name of the person who reported the abuse or neglect, is preventing the persons who have been accused of child abuse or neglect from exercising all legal rights available to them, i.e. the institution of a suit which alleges the report was made in bad faith or malice.[18] The department has, citing as its authority, an Attorney General Open Records Decision[19] and Section 34.08, Texas Family Code, refused requests for the release of the reporter's identity.

D. SECTION 34.04 PRIVILEGED COMMUNICATIONS.

The only privilege available in any proceeding regarding the abuse or neglect of a child or the cause of any abuse or neglect in Texas is the attorney-client privilege; therefore, a person cannot seek to exclude evidence on the basis of the doctor-patient relationship or the husband-wife privilege.

Arizona, Delaware, Florida, Idaho and Louisiana join with Texas in excluding all other privileges except the attorney-client privilege.[20]

> In most cases of child abuse, the only eyewitnesses are the parents and the child. The child is either too young or too intimidated to testify and the suspected abuser, of course, cannot be forced to testify against his own interests. To circumvent the possibility of having to establish a case of child abuse, sexual abuse or neglect on purely circumstantial evidence, the privileged status of confidential communications and events between husband and wife, doctor and patient, is denied... This should balance the judicial scales toward protecting the interests of the child.[21]

E. SECTION 34.05 INVESTIGATION AND REPORT OF RECEIVING AGENCY.

Section 34.05 Texas Family Code requires the State Department of Public Welfare or the agency designated by the court to be responsible for the protection of children to promptly and thoroughly investigate the report after it is received orally or in writing.

Following receipt of a report under Section 34.02 of the *Texas Family Code*, department staff conducts an investigation to determine whether the child is in need of protective services.

> The investigation (is) made in a non-accusatory and non-punitive manner conducive to maintaining the parent-child relationship and strengthening the family, if possible. Protection (is) provided for the child when needed. The investigation is to be completed within 30 days if possible.[22]

The *Texas Family Code* provides that the investigation's primary purpose "is the protection of the child." In conducting the investigation, the *Texas Family Code* prescribes certain procedures and requires that certain information be obtained. This information includes:

(1) the nature, extent, and cause of the abuse or neglect;

(2) the identity of the person responsible for the abuse or neglect;

(3) the names and conditions of the other children in the home;

(4) an evaluation of the parents and persons responsible for the care of the child;

(5) the adequacy of the home environment;

(6) the relationship of the child to the parents or persons responsible for the care of the child;

(7) a visit to the child's home;

(8) a physical and psychological or psychiatric examination of all the children in that home;

(9) an interview with the subject child;

(10) all other pertinent data.

Section 7000 goes into great detail (9 pages) regarding the investigation of a report of abuse or neglect. Detailed explanations of methods for obtaining the required information are outlined in Section 7000.

The *Texas Family Code* provides that if admission to the home, school, or any place where the child may be, and permission of the parents or person responsible for the child's care for the physical and psychological or psychiatric examination cannot be obtained, then the juvenile court or the district court, upon cause shown shall order the parent or the person responsible for the care of the children, or the person in charge of any place where the child may be, to allow entrance for the interview, above examinations, and investigation.

20 U.S.C.A. Section 1232g, the Family Educational Rights & Privacy Act has provided difficulty in some geographic areas to department staff in investigating an abuse or neglect case. When necessary, the Texas Family Code provision regarding obtaining a court order, has allowed department staff access to needed information kept by the school.

Additionally, Subparagraph(E) of 20 U.S.C.A. Section 1232g(b)(1) provides that information may be released to "State and local officials or authorities to whom such information is specificially required to be reported or disclosed purusant to state statute adopted prior to November 19, 1974," and Subparagraph (I) of 20 U.S.C.A. Section 1232g(b)(1) allows for release of information "subject to Regulations of the Secretary, in connection with an emergency, (to) appropriate persons if knowledge of such information is necessary to protect the health and safety of the student or other persons."

Provision is made under Section 34.05, Texas Family Code for the investigator to file a petition pursuant to Chapter 17, Suit for Protection of Child in Emergency, Texas Family Code, for temporary care and protection of the child, if, before the investigation is complete, the investigator is of the opinion that immediate removal is necessary to protect the child from further abuse or neglect.

Section 7000 outlines procedures department staff employ if a decision to remove a child pending completion of an investigation is made:

> When a decision is made to remove the child on an emergency basis before a court order can be obtained and without consent or knowledge of the parents, emergency removal is made possible by the Texas Family Code, which states that, "An authorized representative of the State Department of Public Welfare, a law enforcement officer or a juvenile probation officer may take possession of a child to protect

him from an immediate danger to his health or physical safety and deliver him to any court having jurisdiction.... The child shall be delivered immediately to the court." TEX. FAM. CODE Section 17.01. No child shall be removed from his home without supervisory approval. If no supervisor is available, approval at the program director level is required. When possible, a law enforcement officer should accompany the worker when he removes the child from his home. When emergency removal is necessary, the rights of the parents are respected.

The Texas Family Code stipulates that the worker may remove a child without civil liability if that worker has reasonable cause, at the time possession was taken, to believe there was an immediate danger to the physical safety or emotional well-being of the child. See TEX. FAM. CODE Section 17.09. Concrete facts should exist to illustrate and support the worker's beliefs.

After emergency removal, the worker will "... file a petition in the court immediately on delivery of the child to the court, and a hearing shall be held to provide for the temporary care or protection of the child." This hearing may be held without notice. See TEX. FAM. CODE Section 17.02, 17.03.

In accordance with Section 17.04 of the Texas Family Code, the court may decide that the child is in need of immediate protection and make any appropriate order for the care and protection of the child.

The emergency order expires at the end of the 10-day period following the date of the order, on the restoration of the child to the possession of his parent, guardian or conservator, or on the issuance of temporary orders in a suit affecting the parent-child relationship, whichever comes first. If the child is not restored to the possession of his parent or conservator, the court must order this restoration or order the filing of a suit affecting the parent-child relationship. TEX. FAM. CODE Section 17.05. If during the emergency order the Department feels further court action is necessary to continue protecting the child, a petition is filed by the county or district attorney in the appropriate court for a suit affecting the parent-child relationship. In the petition, the following information will be presented to the court:

1. The child's need for protection.
2. Immediate plans for the child.
3. Visitation and financial responsibilities of the parents.

Following the investigation, the Texas Family Code provides that a complete written report, together with recommendations, be submitted to the juvenile court or the district court, the district attorney, and the appropriate law enforcement agency if sufficient grounds for the institution of a suit affecting the parent-child relationship are found. The court may then direct the investigator to file a petition seeking appropriate relief under Subtitle A of Title II, Texas Family Code.

Department staff in Section 7000 are instructed in the following manner regarding the handling of completed investigations:

> The information gathered during the investigation is assessed to determine whether the child is in need of protective services, the effects of his living conditions upon him and his need for further protective services. Care should be taken in assessing the information gathered to differentiate between facts which can be documented and assessments or impressions which are not proven.
>
> Child abuse or neglect is validated when abuse or neglect is substantiated during the investigation. Available evidence may indicate that abuse or neglect should be suspected or is likely to occur as a result of home conditions which seriously threaten the child physically or emotionally. Abuse or neglect is invalidated only when evidence clearly rules out abuse or neglect.
>
> Protective services are to be continued if validated, suspected or potential abuse or neglect is detrimentally affecting the safety and welfare of the child, or if protective services are indicated because

of truancy, runaway behavior, a juvenile in need of supervision or unmarried or school-age parenthood. When further protective services are not needed to protect the child, the case will be closed.

Whether the need for protective services is validated, invalidated, suspected or evidence indicates that the need for protection is likely to occur, the worker interprets the results of the investigation (a) to the parents, (b) to the child old enough to understand, and (c) to the complainant who is a professional person working with the family. The interpretation to a complainant who is a neighbor or friend should consist of informing them that the Department is investigating the report and whether the Department will continue to work with the family. The interpretation to the complainant may be in writing to document that an interpretation was made.

At the discretion of the district or juvenile court, the court may request written reports of protective services investigations where sufficient grounds for the institution of a suit affecting the parent-child relationship are found in order that the Court may direct the filing of petitions when indicated. TEX. FAM. CODE Section 34.05 (e)(f). Agreement as to which investigations are to be brought before the court, and the procedure, is to be determined by the court. Department staff will follow the procedures set by the court.

At the discretion of the district or county attorney, the district or county attorney may request written reports of protective services investigations where sufficient grounds are found for the institution of a suit affecting the parent-child relationship, in order that criminal charges can be filed if indicated. Texas Family Code Section 34.05(e). Agreement as to which investigations are to be brought before the district or county attorney, and the procedure, is to be determined by the district or county attorney. Department staff will seek a written agreement with the district or county attorney concerning the procedures and will follow the procedures set by the district or county attorney.

> At the discretion of the local law enforcement office, the law enforcement officer may request written reports of protective services investigations where sufficient grounds are found for the institution of a suit affecting the parent-child relationship, in order that criminal charges can be filed if indicated. Texas Family Code Section 34.05(e). Agreement as to which investigations are to be brought before the law enforcement office, and the procedure, is to be determined by the law enforcement office. Department staff will seek a written agreement with the law enforcement officials concerning these procedures and will follow the procedures set by the law enforcement office.

F. SECTION 34.06. CENTRAL REGISTRY

Under Section 34.06, Texas Family Code, the State Department of Public Welfare is required to establish and maintain in Austin, Texas, a central registry of reported cases of child abuse or neglect, with the department having the flexibility to adopt rules and regulations as necessary to carry out the requirements of Section 34.06. In adopting the rules, the department is required to provide for cooperation with local child service agencies, including hospitals, clinics, and schools, and cooperation with other states in exchanging reports to effect a national registration system.

> The need for a centralized collection of abuse and neglect reports by each of the various states has become even more important with the establishment of the National Clearinghouse on Child Neglect and Abuse by the Children's Division of The American Humane Association. Under the auspices of the U.S. Children's Bureau and the Office of Child Development, Department of Health, Education and Welfare, the Clearinghouse is gathering data on the nature, incidence and characteristics of child neglect and abuse. In order to permit meaningful analysis, and thereby maximize its value for policy formulation, data received from the states must be accurate, complete and uniform.[23]

The department fulfills the mandate of Section 34.06, Texas Family Code through the Child Abuse and Neglect

Report and Inquiry System (CANRIS), a statewide automated system designed to facilitate reporting of child abuse and neglect and to collect and store confidential information in the central registry. CANRIS provides linkage to all protective services units for the purpose of reporting or retrieving information pertaining to instances of child abuse or neglect. By employing the use of CANRIS, a minimum amount of data is collected regarding all persons included in a reported case of abuse or neglect to assist the caseworker in conducting investigations and determining ongoing casework plans for services to children and their families.

The CANRIS operation has three basic features: (1) Reporting, (2) Inquiry and (3) Statistics.

All reports of abuse and neglect are reported to CANRIS. Reported information is maintained in the central computer file located in Austin, Texas, and its confidentiality is protected by several levels of security which allows only authorized department staff access to this information. Initial information is up-dated as necessary during the course of an investigation.

After a report has been received by the department and entered into CANRIS, the inquiry feature enables authorized department staff to determine if any individual listed on the current report has been involved in a prior incident of abuse or neglect. This is accomplished via the teleprocessing center and involves interrogating the automated central file for a name match as well as other data which would confirm the individual's identity as being the person involved in another report at some previous time. Department policy and system security controls built into the system allow only authorized workers to inquire into the system and then only on specific names and only after entering a report on that name. It is not possible to perform random inquiry of the files at any time.

By using the inquiry feature of CANRIS, a worker is able to maintain linkage with all areas of the state and retrieve data on those individuals involved in prior reports even though the person may move from location to location.

Statistical information is compiled from the CANRIS files and distributed monthly to various levels of management within the department. These management reports provide data for determining volumes of activity in specific regions of the state, types of abuse or neglect reported, profile information regarding both victim and perpetrator, sources of reports by category, and other reports designed to provide accountability for worker activity as well as provide essential data for department policymaking and the implementation of preventive programs to combat child abuse and neglect.

In recent months, public concern has focused on the removal of names from the CANRIS system where abuse or neglect has been invalidated. The Board of Public Welfare, at its June 29, 1976, meeting, approved changes in the Social Services Handbook regarding the CANRIS system. The changes dealt with the removal of names and identifying information from the central computer file after a six month period when the report of abuse or neglect had been invalidated. Other provisions of the Board action dealt with validated, uncertain, potential or moved reports. Department staff, at the time of this writing, were in the process of finalizing a Social Services Handbook revision to incorporate directed Board changes into the Section 7000.

G. SECTION 34.07. FAILURE TO REPORT: PENALTY.

A person[24] commits an offense, punishable as a Class B misdemeanor,[25] if the person has cause to believe that a child's physical or mental health or welfare has been or may be further adversely affected by abuse or neglect and knowingly fails to report in accordance (emphasis added) with Section 34.02, Texas Family Code.

"The underlying philosophy for the inclusion of a penalty clause is that no action can be mandated by law without also providing a penalty for failure to comply with that legal obligation. It is a device for enforcing the law."[26]

H. SECTION 34.08. CONFIDENTIALITY.

The sentence in the reporting statute regarding confidentiality reads as follows:

> The reports, records and working papers used or developed in an investigation made under this chapter are confidential and may be disclosed only for purposes consistent with the purposes of this code under regulations adopted by the investigating agency.

Regulations adopted by the State Department of Public Welfare in its Section 7000 provide:

> Disclosure of information in records

maintained by the Department is governed by the Open Records Act, TEX. REV. CIV. STAT. ANN. article 6252-17a, and a number of laws and Attorney General Opinions. The Open Record Act requires that information in records not deemed as within the sixteen exceptions under the Act be made available to the public upon request. Protective services staff should be familiar with policies regarding confidentiality so that information is not withheld or released contrary to the requirements of law.

Confidentiality of records of child abuse and neglect investigations is also established in Section 34.08 of the Texas Family Code.

Reports, records and working papers used or developed in a protective services investigation are confidential and will not be released except as follows:

1. For purposes consistent with the Texas Family Code to include reports to the court, district or county attorney, law enforcement offices (see Item 7228) or Child Abuse and Neglect Report and Inquiry System. (See Item 7222). Protective services case information is shared with the court and law enforcement officials, as well as with appropriate Departmental staff, including supervisory, administrative and special investigation staff.

   Note: The court is entitled to the Department's total case and fiscal records on families and children the Department is serving who are under the continuing jurisdiction of the court.

2. Upon request or authorization of the parent, the child or their legal representative. The name of the complainant and other identifying information is confidential and must be struck from information given to the parents, the child, their authorized representative, or the general public.

   All requests from parents, the child, their legal representative, or the general public for disclosure of child abuse or neglect information under the Open Records Act must be made in person by completion of Form 100 Request for Records of Texas State Department of Public Welfare. Requests will be referred to the local office's staff person designated by the regional administrator to handle requests under the Act. In accordance with established Departmental procedure, this designated staff person will respond as appropriate to the request. Original copies of public records may not be removed from the office to which the request for information is made and under no circumstances is any material in the records to be removed. However, handwritten notes may be made by the person reviewing the record. When the parents, child or their legal representative review the record, a staff person should be present to answer questions and oversee the review.

If the request comes from a social or medical agency working with the family, an authorization for release of information signed by the parents must be furnished before information can be released. The authorization must be maintained in the client's folder at all times.

If the family refuses to sign an authorization for release of information and the release of the information is necessary to the protective services investigation, the information may be released with supervisory approval and documentation of the situation in the case narrative dictation. When information is released, only that will be supplied which pertains to work performed or purchased by the Department. The names of other agencies or persons knowing of the family or having worked with the family may be revealed so that the requesting agency or professional person may be aware of the existence of other sources of information.

All questions or problems encountered by Departmental staff receiving requests for protective service records which are classified as exceptions (i.e., information not required to be released) or appear to be exceptions under the Act will be forwarded through regional staff to the Assistant

Commissioner for Coordination, State Office.

In Open Records Decision No. 49,[27] Attorney General John Hill ruled that information in the department's case record concerning a complaint of child abuse which would reveal the identity of the complainant was excepted from disclosure under the Open Records Act by section 3(a)(1), as information deemed confidential by judicial decisions recognizing the informer's privilege.

A broader issue was decided in Open Records Decision No. 73.[28] The issue in ORD 73 was whether or not the department's protective services records pertaining to complaints of child abuse and neglect were subject to disclosure under the Open Records Act, article 6252-17a, V.T.C.S. The opinion had been requested because a provision, similar to Section 34.08, Texas Family Code, was not part of the reporting statute. Section 34.08 was added by Acts 1975, 64th Leg., p. 1272, ch. 476, section 54, effective September 1, 1975.

Attorney General John Hill excepted the child abuse and neglect reporting information from disclosure on the following grounds:

> We believe that the information requested is excepted from public disclosure by section 3(a)(1) as information deemed confidential by constitutional law, as it is within the realms of family privacy.
>
> Further, while the primary purpose of the investigation is the protection of the child, a definite secondary purpose of the investigation is to determine whether criminal prosecution may be warranted.
>
> We believe that the statutory requirement that the report of the investigation be given to a law enforcement agency, in whose hands the type of information to which you refer would be excepted from disclosure under section 3(a)(8) of the Open Records Act, makes that exception applicable to the requested information.

IV. CONCLUSION.

> Every state -- plus the District of Columbia, Puerto Rico and the Virgin Islands -- has enacted legislation for mandatory reporting of child abuse. But the quality of the law varies widely. In fact, there are 50 different interpretations of how to solve the same problem....

> There is still a desperate need for coordination and cooperation among the several state agencies (social services, health and mental health and the juvenile court system) concerned about the abused child and his family....[29]

The continued co-operation and interaction among judges, lawyers, department staff and all other agencies and persons involved in the protection of abused or neglected children in Texas cannot be over-emphasized. The success of Chapter 34, Texas Family Code, as well as other chapters in the Code relating to the protection of children hinges on effective cooperation. More importantly, the success of the objectives of these code provisions, i.e., the protection of children, demands it.

REPORTING AND INVESTIGATING CHILD ABUSE

FOOTNOTES

1. Dr. Francis & Lucht, Child Abuse Legislation in the 1970's, (revised edition; Denver: The American Humane Association, Children's Division, 1974), p. 6.

2. Chapter 117, Acts of the 59th Legislature, 1965 (Article 695c-2, Vernon's Texas Civil Statutes).

3. Chapter 219, Acts of the 61st Legislature, 1969 (Article 695c-2, Vernon's Texas Civil Statutes).

4. Chapter 902, Acts of the 62nd Legislature, 1971 (Article 695c-2, Vernon's Texas Civil Statutes).

5. Smith, Family Code Symposium; Report of Child Abuse, TEX. TECH. L. REV. 503-4 (1974).

6. TEX. ATTY. GEN. OP. NO. H-237 (1974).

7. TEX. REV. CIV. STAT. ANN. Art. 5429b-2.

8. Statistics from State Department of Public Welfare.

9. Ibid.

10. TEX. REV. CIV. STAT. ANN. Art. 5429b-2.

11. TEX. ATTY. GEN. OP. NO. H-494 held the requirement that "any person... report in accordance with 34.02" was applicable to the Department of Mental Health and Mental Retardation, without regard to the provisions of article 5547-87, V.T.C.S.

12. Francis & Lucht, op. cit., p. 175.

13. Katz, McGrath, and Howe, Child Neglect Laws in America (American Bar Association, 1976), p. 4-5.

14. Francis & Lucht, op. cit., p. 3.

15. Form 201, Notification of Suspected Child Neglect or Abuse.

16. Francis & Lucht, op. cit., p. 180-181.

17. Francis & Lucht, op. cit., p. 12.

18. See Jerome F. Dvorak, et ux. v. Raymond W. Vowell, Commissioner, State Department of Public Welfare, Civil Action No. 14,150, District Court, Colorado County, Texas, (1976).

19. TEX. ATTY. GEN. O.R.D. NO. 49 (1974). O.R.D. NO. 49 is discussed under Section 34.08, *Texas Family Code*, supra.

20. Katz, McGrath, and Howe, *op. cit*., Table IX, p. 43-45.

21. The Education Commission of the States, Early Childhood Task Force, *Child Abuse and Neglect: Alternatives for State Legislation*, (Denver, 1973), p. 57-59.

22. State Department of Public Welfare, *Social Services Handbook*, (1975), Section 7000, p. 7223.

23. Francis & Lucht, *op. cit*., p. 178-179.

24. "Child Abuse Reporting Statutes: The Case for Holding Physicians Civilly Liable for Failing to Report," 12 *San Diego Law Review* 743 (1975); and *Landeros v. Flood*, decided June 30, 1976 by the California Supreme Court on liability of physician and hospital for failure to report suspected abuse. The court held that the plaintiff is entitled to prove a civil claim for damages for both medical malpractice and violation of the reporting statute (#S.F. 23359). Information for this footnote was received from Regional Resource Center on Child Abuse and Neglect, The University of Texas at Austin, School of Law.

25. TEX. PENAL CODE ANN., sec. 12.22 (1974) punishable by a fine not to exceed $1,000.00 or confinement in jail for a term not to exceed 180 days or both such fine and imprisonment.

26. Francis & Lucht, *op. cit*., p. 13.

27. TEX. ATTY. GEN. O.R.D. NO. 49 (1974).

28. TEX. ATTY. GEN. O.R.D. NO. 73 (1975).

29. The Education Commission of the States, *op. cit*., p. 8-10.

EMERGENCY PROTECTION OF CHILDREN

CHAPTER 17 OF THE FAMILY CODE

DARRELL HESTER, Brownsville
Judge, 197th Judicial District
Court

September 1976

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EMERGENCY PROTECTION OF CHILDREN

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EMERGENCY PROTECTION OF CHILDREN

CHAPTER 17 OF THE FAMILY CODE

Judge Darrell Hester

PREFACE

Caveat Lector

I have some concern that Chapter 17 may have been a mistake--a gnawing suspicion that this beguilingly simple statutory vehicle for ultimate state intervention, with passing lip service to due process (if any reader would equate due process with a hearing without notice to parties in interest) is being abused by all of us and proving to be a positive boon to the corner-cutters and over-reactors among us.

Historically the Texas District Courts have always possessed the inherent constitutional power to act with dispatch in a true child abuse emergency as did Judge Sherrill half a decade before the Family Code, Page v. Sherrill, 415 S.W.2d 642 (Tex. 1967). Chapter 17 added nothing, and could add nothing, to the broad constitutional mandate of art. V, sec. 8, TEX. CONST. Instead, I fear it did add seductively simple procedural language, a Siren's song to the harrassed case worker. Masked is the extraordinary, harsh nature of the proceeding; glossed over, its only justification, the real, honest-to-gosh emergency.

In support of my view, I belabor the reader no further than sec 17.01: Legislative authorization for a summary ex parte removal of the child from his home, given, not only to those named classes of officers with minimal child care expertise, but all "law enforcement officers."

A law enforcement officer is defined in TEX. FAMILY CODE ANN., sec. 51.02(a) as the peace officer in TEX. CODE CRIM. PROC. ANN., art. 2.12. (The definition is there limited to Title 3; otherwise undefined, the same definition would seem applicable in sec. 17.01 TEX. FAMILY CODE ANN.) Reading Art.2.12 TEX. CODE CRIM. PROC. ANN. it becomes distressingly obvious that "law enforcement officer" is just about anybody who carries one of those five-cell flashlights.

It could be that in the name of emergency we have over-simplified an act approaching constitutional dimensions giving legislative authority, as we do, literally, to any grocery store parking lot security officer to intervene in the child-parent relationship and take possession of a child without prior notice to, let alone order of, a court.

This, then, is fair warning that certin preconceptions may hereafter creep in. And, I reject those who would argue that I have reached the age when I yearn to return to the good old days. Chapter 17 does not qualify as one of those "bold new approaches" urged upon each Legislature; hailed, though it was, at the time, as new and innovative law in Texas.

> "This authorization is entirely new and designed to give statutory authority to the listed officers to do what they frequently did before January 1 without color of law to protect them." Smith, Title 2, Parent and Child, 5 TEX. TECH L. REV. 448, 456 (1974).

With all due respect to Professor Smith, I must point out that the concept has been in the Texas statutes for three decades. Almost verbatim the same statutory provisions had been in Title 43, Delinquent Children, since 1943. There, embedded between disjunctive phrases, sec. 11, art. 2238-1, TEX. REV. CIV. STAT. ANN. said:

> "Any peace officer or probation officer shall have the right to take into custody any child ...whose surroundings are such to endanger his health, welfare or morals. The child shall forthwith be brought to the judge who shall order the child's...temporary detention...by a suitable person or agency as in the judgment of the court may seem proper."

Buried as these provisions were among those relating to the Delinquent Child, few of us recognized the far-reaching implications of the language. It was left to the enactment of Chapter 17 and the resultant fanfare to focus our attention upon this "new" statutory approach. And, since its enactment, there is growing evidence we have transmuted the major surgery of removal into that highly touted over-the-counter palliative, remarkable for its properties of fast, fast, temporary relief.

So saying, I turn my prejudiced attention to Chapter 17, The Suit for Protection of Child in Emergency.

I. INTRODUCTION - A PRELIMINARY OVERVIEW.

Chapter 17 may be quickly summarized. It is the statutory authority to named officers to take a child from existing custody for immediate delivery to a court of jurisdiction to protect the child from immediate danger to its physical safety or health. A petition must be filed by the officer on delivery of the child to the court and a hearing be had for which notice is not mandatory. A court order of ten days maximum duration may then issue for the care or protection of the child provided the court is shown at the hearing that the child is either without support and dependent on society for protection or is in immediate danger of physical or emotional injury. The proceeding ends in either restoration of the child to original (lawful) custody or the issuance of a superseding ex parte order in a suit affecting the parent-child relationship. Appeal does not stay the ten day order, nor do the proceedings make the court involved one of continuing jurisdiction. During the ten-day period, on motion of a party in interest, the court must hold a second hearing and may modify the order to the best interest of the child. The officer is protected from civil liability if he acted on a reasonable belief for taking the child into his possession.

II. THE LAW BEFORE 1974 AND INDEPENDENT OF THE FAMILY CODE.

Art.V, sec. 8, TEX. CONST. provides a broad inherent power to the Texas District Courts[1] to intervene in the parent-child relationship without notice, and act for the protection and welfare of any minor child to be found within its geographical jurisdiction. Thus, the Texas Supreme Court citing the Constitutional proviso has upheld the District Court upon its own motion issuing an order without notice to take children and deliver them to a place of safety and care pending a hearing. The action, said the Court, is not violative of due process, but a limited intervention...a temporary interruption of custody to be followed by proper notice, appropriate pleadings, and a full hearing. Page v. Sherrill, supra

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[1] Those Domestic Relations and Juvenile Courts created by the Legislature under authority of art. V, sec.1, TEX. CONST. share concurrent jurisdiction with Constitutional District Courts; Jordon v. Crudington 231 S.W.2d 641 (Tex. 1950); and coextensive authority under Art V., sec. 8, TEX CONST., Clark v. Tarrant County Welfare Unit, 509 S.W.2d 378 (Tex. Civ. App.Fort Worth, 1974, no writ)

Page was in 1967 only the latest of a half century of cases recognizing the validity of a substantial variety of emergency orders issued without notice "to properly guard the welfare of the child until a final hearing could be had on the issue..." See Green v. Green, 146 S. W. 567 (Tex. Civ. App.--Amarillo, 1912, writ dism'd).

The constitutional directive to the court to see to the welfare of its infants cuts across all technical rules of pleadings and practice because "(i)t is the best interests of the child that are paramount." D______ F______ v. State, 525 S.W.2d 933 (Tex.Civ.App -- Houston 1st Dist. 1975, no writ); Hendrick v. Voss, 334 S.W.2d 308 (Tex.Civ.App.-- Dallas 1960, no writ); Ex Parte Gallop, 486 S.W.2d 836 (Tex.Civ.App. -- Beaumont 1972, writ ref. n.r.e.). "The trial court's efforts to exercise broad equitable powers in determining what would be best for the future of the children should be unhampered by narrow technical rules." Williams v. Perry, 58 S.W.2d 31 (Tex.Comm. App. Sec. A, 1933). "Any pleading that shows on its face that the welfare of a minor child requires that an order be made in regard to his custody is sufficient." Kell v. Texas Children's Home & Aid Society, 191 S. W.2d 900 (Tex.Civ. App. -- Fort Worth 1946, writ ref. n.r.e.)

The child has, without exception, always become a ward of the Texas court when brought to the court for any purpose. Knollhoff et ux v. Norris, 256 S.W.2d 79 (Tex. 1953); McClendon v. McClendon, 289 S.W.2d 640 (Tex.Civ. App. -- Fort Worth 1956, no writ); and mistreatment or neglect by one having custody of the child authorizes the immediate intervention of the court to protect the interest of the child; Dewitt v. Brooks, 182 S.W.2d 687 (Tex. 1944); including the power of the court to enter any appropriate order without notice, Casteel v. Mandel, 415 S.W.2d 512 (Tex.Civ.App.--Dallas 1967, no writ); Dannelly v. Dannelly, 417 S.W.2d 55 (Tex. 1967).

Due process undoubtedly requires notice and a full hearing but these can await the more immediate needs of a child in substantial danger. There will be time enough later for proper notice, appropriate pleadings and a full hearing. Page v. Sherrill, supra and Casteel v. Mandell, supra. Nor does any of this depend on domicile of the parents or existence of property rights. It has its origin in a protection that is due the incompetent or the helpless found within the court's territory. Avenier v. Avenier, 216 S.W.2d 638 (Tex. Civ. App.--San Antonio 1948, writ ref. n.r.e.)

In the light of the language of the pre-FAMILY CODE decisions, a reading of Chap. 17, TEX. FAMILY CODE ANN. makes apparent that the FAMILY CODE does not expand upon the already broad powers of the court to act in the emergency protection situation. The focus is, rather, upon the officer in the field and the sequential mechanics of an emergency intervention.

In the FAMILY CODE the Legislature provided detailed means and motivation, for the first time, to seek out and identify the child in need of protection. See Chap. 34, TEX. FAMILY CODE ANN. In turn, the thrust of Chap. 17 is to authorize those who make that identification in an emergency to proceed to take possession and bring the child to the immediate attention of the court.

The preliminary ex parte order of the court in Page v. Sherrill, supra, is postponed one step; the officer acts first; the child is removed to a place of safety, and only then the court's attention is invoked; and, to encourage the initial precautionary removal, the officer is afforded protection from civil liability for his act in taking the child. Repeatedly the focus is upon the officer; what he can do; what he must do; and what protection is afforded him.

III. STEP ONE: TAKING POSSESSION.

> "An authorized representative of the State Department of Public Welfare, a law enforcement officer, or a juvenile probation officer may take possession of a child to protect him from an immediate danger to his health or physical safety ..." sec. 17.01 TEX. FAMILY CODE ANN.

A. WHO? THOSE AUTHORIZED TO TAKE POSSESSION

Officers empowered to take possession of a child to protect him in an emergency are: authorized representatives of the State Department of Public Welfare;

law enforcement officers; and juvenile probation officers. Any effective limitation on those who may act is virtually lost in the term "law enforcement officer". The latter, not defined in Title 2 of the FAMILY CODE, but defined in Title 3, is a peace officer as defined in art. 2.12, TEX. CODE CRIM. PROC. and ranges from sheriffs and their deputies through arson investigators to officers of the Park & Wildlife Commission, airport security personnel, to department store security officers.

The requirement that representatives of the State Department of Public Welfare be authorized is ambiguous; but, has apparent reference to Departmental authorization.[1]

B. WHEN? THE GROUNDS FOR INTERVENTION AND REMOVAL

The act of taking possession must be to protect the child from an immediate danger to the child's health or the child's physical safety. Unlike sec. 15.02, TEX. FAMILY CODE ANN which focuses upon the conduct of the parent as grounds for termination, the focus here is properly on the child, but unfortunate that it furnishes no better objective standards. Given the far-reaching ramifications of the act of intervention, narrowly drawn guidelines would be in order. Instead, the officer is required to make highly subjective determinations.[2]

As drafted by the Bar's Family Code Project in 1973, sec. 17.01 had provided the additional ground of immediate danger to a child's emotional welfare. This was struck out by the Legislature in the feeling that the authorization should be upon narrowly defined grounds. In 1975, the next Legislature added danger to a child's health to that of danger to physical safety. It is regrettable that we seemingly can give no clearer guidelines. A reference to Webster makes clear that whatever limiting the 1973 Legislature achieved in omitting a danger to the child's emotional welfare, the 1975 Legislature nullified by adding the nebulous standard of health:

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[1] The Department of Public Welfare construes the reference to authorized representatives of that Department to refer to an internal authorization; and, members of its Child Protective Department are the only DPW representatives departmentally authorized to act under sec. 17.01.

[2] The seeming inability to draft self-defining standards for removal is not limited to Texas. California, for example, authorizes removal by a peace officer who has reasonable cause for believing a child is neglected or abused.

> "Health: the state of being sound in body and mind, the condition of an organism with respect to the performance of its vital functions esp. as evaluated subjectively or nonprofessionally; flourishing condition; well being, vitality, prosperity." Webster's Third International Dictionary, 1964.

It has been argued with good reason that such interventions be strictly limited to instances when a child has suffered (1) serious physical harm; (2) serious and very narrowly defined emotional damage, or (3) sexual abuse; or, where there is a substantial likelihood that the child imminently will suffer serious physical harm, See Wald, State Intervention on Behalf of Neglected Children: Standard for Removal of Children From Their Homes, 28 STANFORD L. REV. NO. 4, 628 (1976).

The officer required to make a field decision to intervene or not in the parent-child relationship needs well-defined standards for his action. Awaiting clarification by the Legislature, what would be wrong with the internal promulgation of informal guidelines within child welfare units, juvenile probation departments, police juvenile divisions and such other organizational units? I suggest a beginning point be consideration of the standards for removal of children proposed by Michael S. Wald, 28 STANFORD L. REV. NO.4, 700 (1976):

1. A child has suffered a physical injury, inflicted on her non-accidentally, causing disfigurement,

impairment of body functioning, or severe bodily harm, or there is a substantial likelihood that the child imminently will suffer such an injury.

2. A child has suffered physical injury causing disfigurement, impairment of bodily functioning, or severe bodily harm as a result of conditions uncorrected by her parents, or by the failure of her parents, to adequately supervise or protect her; or there is a substantial risk that the child imminently will suffer such harm as a result of conditions uncorrected by her parents or by the failure of her parents to adequately supervise or protect her.

3. A child is suffering serious emotional damage, evidenced by severe anxiety, depression or withdrawal or untoward aggressive behavior toward others, and her parents are unwilling to provide, when financially able to do so, or to permit, necessary treatment for her.

4. A child has been sexually abused by a member of her household.

5. A child is in need of medical treatment to cure, alleviate, or prevent her from suffering serious physical harm that may cause death, disfigurement, or substantial impairment of bodily functioning, and her parents are unwilling to provide, when financially able to do so, or consent to, the medical treatment.

So "(l)imiting intervention to cases of serious harm should minimize unwarranted and discriminatory intervention. It should also result in a more efficient use of limited resources." Wald, supra

C. HOW? THE MEANS TO EFFECT REMOVAL.

The officer concludes he must take possession of the child. But how? Can the officer use force, and if so, to what extent? Enter private property? Break down a door? Arrest those who would interfere with his action? Here the statutory silence is deafening.

The taking into possession of the abused or neglected child in an emergency under sec. 17.01, TEX. FAMILY CODE ANN. and the delinquent child under sec. 52.01, are in many ways analogous to effecting an arrest. The same rules would seem to apply. Sadly, the analogy having been made, little definitive help can be found in the law of arrest:

> "In making an arrest, all reasonable means are permitted to be used to effect it. No greater force, however, shall be resorted to than is necessary to secure the arrest and detention of the accused," art. 15.24, TEX. CODE CRIM. PROC. ANN.

> "A peace officer, or person acting in a peace officer's presence and at his direction, is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to make or assist in making an arrest..." sec. 9.51 TEX. PENAL CODE ANN.

Forceful entry is restricted:

> "In the case of felony, the officer may break down the door of any house for the purpose of making the arrest." art. 15.25, TEX. CODE CRIM. PROC. ANN.

It is obvious from these statutory standards for effecting an arrest that the officer undertaking a sec. 17.01 seizure is going to be making a judgment decision, weighing the gravity of the child's immediate need against the means that would be necessary to effect possession. The breaking down of a door of a home to take the moderately neglected child from a passively resisting parent would not seem reasonable, limited as such action is under Texas law to the serious felony situation. The breaking down of the same door to reach an unconscious abandoned child could hardly be questioned. These are blacks and whites. The vast grey area in between will cause the problems.

The officer will be left primarily to his ingenuity to achieve peacefully, wherever possible, the possession. If I were drawing broad perimeters, I would suggest: (1) the use of force would not be justified solely to secure possession; (2) entry on private property accomplished without force is probably justified; (3) forceful entry into a habitation probably would be justified only in the extreme case of true rescue; (4) force could be used to defend against force initiated by another during the seizure process; (5) frequently the officer will be acting in defense of the child in the very act of taking possession and then entitled to use reasonable force in defense of a third person, See sec. 9.32 TEX. PENAL CODE ANN.

None of this is very helpful. I give it because in almost every discussion of sec. 17.01 the question of means available to the officer will arise.

The only consolation to be found is that there are less than a dozen cases in the books, in Texas, in this area, i.e., lawfulness of the means used to effect an arrest. The dearth of case law suggests that the officer in the field must be doing something right, left only to measure the means he will use by the statutory purpose he seeks to accomplish.

IV. STEP TWO: INVOKING THE COURT'S ATTENTION.

"...the child shall be delivered immediately to the court." sec. 17.01 TEX. FAMILY CODE ANN.

A. DELIVER - WHERE:

"...shall deliver him to any court having jurisdiction." sec. 17.01, TEX. FAMILY CODE ANN.

The court to whom the child must be delivered by the seizing officer need not be the court of continuing jurisdiction, even if there exists one under sec. 11.05. It may be any of those courts having jurisdiction to hear and determine a suit under Subtitle A, Title 2 of the FAMILY CODE: that is, any District Court, Court of Domestic Relations, or Juvenile Court.

B. DELIVER - WHEN?

"...immediately..." sec. 17.01, TEX. FAMILY CODE ANN.

What is immediate is a fact question, and the usual definitions of "without any time intervening" or "without any delay" must be qualified by "due diligence". Hicks v. Mathews, 266 S.W.2d 846 (Tex. 1954) Fouraker v Kidd Springs, 65 S.W.2d 796 (Tex. Civ. App.--Dallas 1933, no writ), including the considerations of the intervention of Sunday or a legal holiday, Robinson v. Lovell, 238 S.W.2d 294 (Tex. Civ. App.--Galveston 1951, writ ref. n.r.e.); judicial accessibility and other duties of the officer, Fouraker v. Kidd Springs, supra, citing 25 C.J. 493. The language of the cases and the harsh nature of the act (qualified by the time requirements for preparing a petition) should suggest to the prudent officer the delivery to the court should be made within the first hours of a working day following the moment of seizure of the child. California statute, for comparison, allows a maximum period of forty-eight hours, sec. 631,CAL.WELFARE & INSTITUTION CODE.

C. DELIVER - HOW?

In both sec. 17.01 and sec. 17.02 is found the requirement that the child be delivered to the court. The officer seizing the child shall deliver the child to the court immediately, sec. 17.01 TEX. FAMILY CODE ANN. A petition shall be filed by the officer immediately on delivery of the child to the court, sec. 17.02, TEX. FAMILY CODE ANN. The wording is unfortunate; and, literally requires physical delivery to a courtroom. The better view is that the filing of the petition in court is, itself, the delivery of the child; that the statute contemplates constructive delivery, not a purposeless act of physical delivery into the presence of the court. However, it is the position of some that delivery of the child into court involves its being brought "to the courtroom". See Martin III and Bedard, Emergency Protection of Children and Child Abuse . . ., in PROFESSIONAL DEVELOPMENT DEPARTMENT, STATE BAR OF TEXAS, ADVANCED FAMILY LAW REFRESHER COURSE (1976).

The duplicitous use of the term "immediately" in sec. 17.02, i.e., "the child shall be delivered immediately to the court and the officer ...shall file a petition in the court immediately on delivery of the child to the court" lends credence to Judge Martin's position that a physical delivery to the courtroom is contemplated by the Code. Such an intent is not to be found elsewhere in the Code.

Prior to 1974 a dependent or neglected child had to be physically present in the courtroom during the hearing, Art. 2333 REV. CIV. STAT. ANN; and, the court erred in not having the child before it at the hearing, Stubblefield v. Hampton 295 S.W.2d 233 (Tex. Civ. App.--San Antonio, 1956, no writ). This somewhat barbaric requirement has been omitted in Chapter 15, Termination Proceedings.

Before the FAMILY CODE, it was mandatory that the child over age 14 attend his adoption hearing, art. 46(a), sec. 5, REV. CIV. STAT. ANN. Now the presence of the child is discretionary with the court, sec. 16.07, TEX. FAMILY CODE ANN.

In other areas of the law, while formerly an appearance was by actual presence in the court, and still exists in contemplation or a fiction of the law, present-day actual presence is generally not contemplated, C.J.S. 20, and mere physical presence is not effective for most purposes, Crockett v. Diffee, 137 S.W.2d 167 (Tex. Civ. App.--Texarkana, 1940, no writ).

Practical considerations argue for constructive delivery. The child taken under Sec. 17.01 from an immediate danger to its health or safety obviously should be in a medical facility, foster home, or group care facility immediately after intervention, rather than in some lofty courtroom under the puzzled eye of a judge who probably has never heard of him at that point.

But...

Since Judge Martin's interpretation has the support of the literal words of the statute, other courts not requiring that the child be physically brought into the courtroom may take a coward's refuge with me, as a last resort, in the holdings under old D & N Art. 2333 VERNON'S ANN. CIV. STAT., that the requirement for the child's attending the hearing was only directory and never jurisdictional, Kamleh v. Brown, 389 S.W.2d 513 (Tex. Civ. App.--Waco, 1965, no writ).

V. STEP THREE: FILING A PETITION.

> "...the officer or representative shall file a petition in the court immediately upon delivery of the child to the court." Sec. 17.02 TEX. FAMILY CODE ANN.

Assuming filing the petition to be synonymous with delivering the child, the requirement that the petition be filed immediately is more emphasized. The petition then, can be framed in terms of constructive delivery of the child to the court, set out the circumstances of the taking of the child into possession, detail the immediate danger to the child's health or physical safety causing the seizure, name the parties in interest, and request a Sec. 17.04 hearing and the Court's order for temporary care or protection of the child. Several suggested forms for the petition have been published. See Simpkins, Texas Family Law, Speers 5th Edition (1976), 546; State Bar of Texas, Family Law Council, Texas Family Code Forms and Practice Guide, November, 1973, Forms II-C-1.

FORM - PETITION FOR PROTECTION OR CARE - (Family Code 17.02)

> NOTE: Collected forms will be found in Chapter M of this institute book. The forms set out here are included by the writer in the hope that in context their inclusion will add clarity to the related discussion.

IN THE INTEREST OF) IN THE ______DISTRICT

______________________________ : COURT OF ____________

A CHILD) COUNTY, TEXAS

PETITION FOR EMERGENCY PROTECTION OF CHILD

TO SAID HONORABLE COURT:

______________________________ hereafter called Petitioner, having taken possession, under authority of Sec. 17.01 of the Texas Family Code, of ______________________________ hereafter called the Child, files this Petition in accordance with Sec. 17.02 of the Texas Family Code, and hereby delivers the Child to this Court.

I.

Petitioner is an authorized representative of the State Department of Public Welfare (a juvenile probation officer) (a law enforcement officer within the meaning of Sec. 17.01 of the Texas Family Code) to wit: ____________________________; Notice and process may be had on Petitioner at ____________________________. Petitioner is age ___years; resides at ______________________________and is not related to the Child.

II.

The Child is a male (female) under the age of 18 whose place and date of birth are ______________________________ (presently unknown to Petitioner). The Child has never been married nor had his (her) disabilities of minority removed. The Child's place of residence is ______________________________ ________________.

III.

The names, ages, and places of residence of the parents are:

Mother:______________________,age_____,residence____________________ ______________________

Father:______________________,age_____,residence____________________ ______________________

IV.

To the best of Petitioner's information and belief there is no Managing Conservator, Custodian, Guardian of the Person, Guardian of the Estate, Possessory Conservator nor Court of Continuing Jurisdiction of the Child and the Child neither owns nor possesses any property.

V.

Petitioner took possession of the child at ________ o'clock ___.m. on ____________________, 197___, in ____________ County, Texas, to protect the Child from an immediate danger to the Child's health (physical safety) and placed the Child at ______________________ awaiting the orders of this Court. The facts and circumstances concerning the Child and Petitioner's taking possession are ________________________

____

____

____

VI.

The Child was not taken into possession pursuant to the order of a Court of Continuing Jurisdiction under sec. 11.11 of the Texas Family Code. This Court has jurisdiction of this proceeding by virtue of the provisions of Secs. 11.01(2) and 17.02 Texas Family Code.

By reason of all the foregoing, Petitioner requests under authority of Sec. 17.02 that an emergency hearing be had herein and appropriate orders entered by the Court for the temporary care or protection of the Child.

____
Petitioner

VI. STEP FOUR: ORDERING THE HEARING

> "...a hearing shall be held to provide for the temporary care or protection of the child. Sec. 17.02, TEX. FAM. CODE ANN; (and such hearing)...may be held without notice. " sec. 17.03 TEX. FAM. CODE ANN.

The urgency of all the prior statutory language has gone. No time frame is fixed for the hearing. Contra the California Code, for example, requires a hearing be held within twenty-four hours after the petition is filed, sec. 632, CALIFORNIA WELFARE AND INSTITUTION CODE.

Clearly a hearing much delayed would violate the spirit of the Chapter as well as the logic of a later provision limiting the order emanating from the hearing to a duration of ten days.

Circumstances will sometimes dictate some delay between the filing of the petition and the hearing, for medical examination and evaluation, determination of available placement, fuller investigation of the facts, authentication of the custodial rights, or other material inquiries. For this reason, and to afford protection to the officer originally taking the child into possession I urge a written order for hearing be entered by the court as soon as a petition has been filed, incorporating appropriate provisions for investigation and evaluation, the filing of resulting reports, and, I think this important, directing or waiving the issuance of notice.

The hearing may be without notice, Sec. 17.03. The fleeting obsequence to due process throughout Chapter 17 is rather astounding. Smith, in his commentary, finds justification in "the emergency nature of the hearing and the limited duration of the order", 5 TEX. TECH. L. REV. 457, 458. This overlooks the absence of a time limit as to when the hearing shall follow after delivery of the child to the court. If the hearing is to be delayed for any reason a sufficient time that notice could be given to parents and/or others under sec. 11.09, minimal due process dictates notice. In an order for hearing, the court can make that determination and provide accordingly.

A final suggestion as to the order for a hearing: Very soon everybody must know if there is already a sec. 11.05 Court of Continuing Jurisdiction as to the child. What better time to direct the clerk to make the sec. 11.17(c) written request? Provisions of time do not mesh well in Title 2. The Department of Public Welfare has ten days after the request is received under sec. 11.17(c) to identify a Court of Continuing Jurisdiction. The mail service being what it is, even the early request by the clerk will likely not get the information by the time needed after the sec. 17.05 hearing.

FORM - ORDER FOR HEARING (TEX. FAM. CODE ANN. 17.02) - WITHOUT NOTICE

IN THE INTEREST OF) IN THE _______DISTRICT
________________________ : COURT OF ______________
A CHILD) COUNTY, TEXAS

ORDER FOR HEARING WITHOUT NOTICE

It appearing to the Court that ______________________, Petitioner, has taken possession of the Child, ______________, under the authority of Sec. 17.01, Texas Family Code, and has delivered the Child to this Court by the filing of a petition herein, IT IS ORDERED in accordance with Sec. 17.02, Texas Family Code, that a hearing be had herein without notice at ______o'clock___.m. on _________________, 197__ to provide for the temporary care or protection of the Child. The Clerk is directed to forthwith make written request of the State

Department of Public Welfare for identification of the court that last had jurisdiction of the Child herein, identifying in such request the child by name, birth date and place of birth.

The Court has determined, and here finds, that the hearing herein should be held as above ordered and at a time insufficient for issuance and service of notice.

SIGNED FOR ENTRY: ______________, 197_____at __________ o'clock, ______.m.

____
Judge Presiding

FORM - ORDER FOR HEARING (TEX. FAM. CODE ANN. 17.02) - WITH NOTICE

IN THE INTERESTS OF) IN THE____DISTRICT
_____________________________ : COURT OF __________
A CHILD) COUNTY, TEXAS

ORDER FOR HEARING AFTER NOTICE

It appearing to the Court that ______________________, Petitioner, has taken possession of the Child,___________, under the authority of Sec. 17.01, Texas Family Code, and has delivered the Child to this Court by the filing of a petition herein, and a hearing should be had herein to provide for the temporary care or protection of the Child, IT IS ORDERED:

1. Such hearing be had at ______o'clock__.m. on ____________________ 197_____, and

2. Dr. ______________, a licensed physician, examine the Child and report to the Court prior to such hearing, the Child's physical and mental condition and the doctor's recommendation as to medical care and procedures; the examination may include any such laboratory tests, x-rays, blood tests, and penetration of tissue as to such doctor shall seem reasonable and necessary for such examination and his report; and

3. The Child remain in custody of the Court pending such hearing; __________________,Administrator of ____________________________Hospital is hereby designated the officer of this Court to have physical custody until such hearing; with all rights, privileges and duties of a Possessory Conservator; and

4. The Clerk issue notice of the hearing to all parties entitled by virtue of Sec. 11.09, Texas Family Code, and all the same be given such notice, provided, however, that the failure of any such person to receive notice shall not be grounds for delaying such hearing; and

5. The Clerk forthwith shall make written request of the State Department of Public Welfare for identification of the court that last had jurisdiction of the Child herein, identifying in such request the Child by name, birthdate, and place of birth.

SIGNED FOR ENTRY: __________________, 197_____, at ______ o'clock, _____.m.

____
Judge Presiding

VII. STEP FIVE: THE HEARING

> "On a showing that the child is apparently without support and is dependent on society for protection, or that the child is in immediate danger of physical or emotional injury, the court may make any appropriate order for the care or protection of the child and may appoint a temporary managing conservator for the child." sec. 17.04 TEX. FAMILY CODE ANN.

Sec. 17.04 enlarges the grounds upon which the court may act as distinguished from those upon which the officer may act under sec. 17.01. The officer can take possession only on grounds of immediate danger to the child's health or physical safety; once the child is before the court, any of three enumerated grounds: dependency, danger of physical injury, or danger of emotional injury may be the basis for the court's order.

I do not view these statutory grounds as exclusive.

> "...the custody of minor children is subject to the general jurisdiction of a court of equity in a proper case independent of statute... broad, comprehensive and plenary...a prerogative of the Crown arising from its general duty

> as *parens patriae* to protect persons who have no other rightful protection, *N.Y.L. Ins. Co. v. Bangs*, 103 U. S. 435, L. Ed. 580, 42 AM JUR 2d 27.

The Texas holdings cited, *supra*, give the court a broad latitude at this juncture, the child is now before the court, and

> "Any pleading that shows on its face that the welfare of a minor child requires that an order be made in regard to his custody is sufficient." *Kell v. Texas Children's Home & Aid Society*, 191 S.W.2d 900 (Tex. Civ. App.--Fort Worth, 1945, writ ref. n.e.).

The broader authority of art. V, sec. 8, TEX. CONST. will be important in many instances. For example, seemingly with the same legislative absent-mindedness that beset them in 1973 when a danger to a child's *emotional* welfare was omitted in sec. 17.01 but left in sec. 17.04, the Legislature in 1975 by amendment added *health* in sec. 17.01 but failed to add it in Section 17.04. What then of the not uncommon situation of the child in need of emergency life or limb saving surgery?

The child is taken by the officer, and properly, on the ground accorded the officer of an existing immediate danger to the child's health. But, without undue violence to the language, the court can hardly order surgery on the only remotely relevant statutory ground accorded it of an immediate danger of physical injury. On the authority of *Page v. Sherrill*, *supra* , B______ F______ v. State, *supra*, *Hendrick v. Voss*, *supra*, and *Knollhoff et ux v. Norris*, *supra*, the child now being before it, the needs of the child and not the limits of the statute authorize the court to act and respond with an appropriate order to protect the interest of the child. *Dewitt v. Brooks*, *supra*.

> NOTE: Sec. 35.01 would not help. It provides that a court having jurisdiction of a child may consent to medical treatment of the child, but is limited to the situation where

> the person having power to consent cannot be contacted and actual notice to the contrary has not been given by that person. At the usual Sec. 17.04 hearing the parent will not only be very much present but adamantly refusing to consent to medical treatment.

There probably have never been two child abuse/neglect emergencies with the same fact situation. There would be no such emergency but for the unpredicted and unpredictable, of parent or conservator, departing the norm. Thus, the courts will always be confronted, as with the child in need of surgery, with other novel, varying legitimate emergency grounds whose statutory description would overtax the most imaginative legislative draftsmen. In all of this, the authority of Article V, Sec. 8, TEX. CONST. serves the court well.

The suggested form of "Order for Care" that follows incorporates the frequently necessary restraint upon a parent from interfering with temporary custody and a self-destruct provision discussed in Sec. VIII.

FORM - ORDER FOR CARE OR PROTECTION (TEX. FAM. CODE ANN.17.04)

IN THE INTERESTS OF) IN THE ______DISTRICT COURT

____________________ : OF

A CHILD) ____________COUNTY, TEXAS

ORDER FOR CARE AND PROTECTION

ON ____________________, 197___, in accordance with an Order for Hearing, the Petition of ______________________ came on for hearing herein.

On a showing at such hearing, the Court finds that the Child ______________________ is apparently without support and dependent on society for protection (in immediate danger of physical injury)(in immediate danger of emotional injury) and that the following Orders of the Court are appropriate and necessary for the care and protection of the Child;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Child be immediately under the Temporary Managing Conservatorship of ____________________, and

2. Subject to further orders of the Court, the Temporary Managing Conservator have and exercise the rights, privileges, duties, and powers accorded a Managing Conservator by Sec. 14,02, Texas Family Code, and shall ____
____
____

3. The Child be restored to the possession of ________ ________________ at ________ o'clock ___.m. ________ ________________, 197__, and this entire order be of no further force and effect as of such time and date unless prior to such time and date an ex parte temporary order as to the Child shall have been issued in a Court of Continuing Jurisdiction in a suit affecting the parent-child relationship, which order shall supersede this Order as of its effective time and date.

The Court further finds that unless restrained as hereinafter ordered, ________________________ will attempt to interfere with the conservatorship here ordered, disturb the peace of the Child and further endanger the health of the Child; and, this will cause immediate and irreparable injury to the Child for which there is no adequate remedy at law. Therefore during the term of this Order ____________________ is hereby restrained from contacting the Child, directly or indirectly, going in, upon or near the premises where the Child may be located, contacting the Managing Conservator here appointed, directly or indirectly, or in any manner disturbing or interfering with the Temporary Conservatorship here ordered.

Until the expiration of this Order, the Court reserves to itself upon further hearing the right to modify any provision hereof to the best interests of the Child.

SIGNED FOR ENTRY:____________,197____, at__________ o'clock ______.m.

____
Judge Presiding

VIII. STEP SIX: CONCLUDING THE EMERGENCY INTERVENTION

> "An order issued under sec. 17.04 of the Code expires at the end of a ten-day period following the date of the order..."sec. 17.05 TEX. FAM. CODE ANN.

Sec. 17.05 seeks to perpetuate the only rationale for the Chapter: short term emergency custodial interruptions. It would try to prevent what all of us recognize to be the potential (and some of us suspect to be the prevalent) abuse of all such temporary acts of intervention.

Historically a child "temporarily" removed has a 50% chance in the United States of still being in foster care three years later, California Legislature Joint Legislative Audit Commission Report on the State's Role in Foster Care in California #148.2 (1974)

The ink was scarcely dry on the new Family Code in 1973 before one sec. 17.04 ten-day order was being made into a series of ten-day orders; even worse, children were being held in foster care months after the initial ten-day order had expired. See Smith, supra, 459. By the time the 64th Legislature met in 1975, it was recognized that the status of a very substantial number of children was in limbo; placed under a long since expired Sec. 17.04 order, they had neither been returned to original custody nor brought into a court of continuing jurisdiction for further proceeding affecting their status.

Subsection (b), a 1975 amendment, sought to halt this. Sec. 17.05(b) was legislative mandate, we should not have needed to "get with it". Now there is only one ten-day placement; within ten days of the issuance of the Sec. 17.04 order, the child shall be back in possession of the custodian from whom it was removed or a suit affecting the child-parent relationship in an appropriate court shall be pending. If, for any reason, neither has occurred within the ten-day period, the court must order immediate compliance.

> "(b) If the child is not restored to the possession of its parent, guardian, or

> conservator, the court shall:
> (1) Order such restoration or possession, or
> (2) Direct the filing of a suit affecting the parent-child relationship in the appropriate court with regard to continuing jurisdiction." sec. 17.05(b) TEX. FAMILY CODE ANN.

Strictly applied, sec. 17.05 would keep a Chapter 17 intervention as a necessary adjunct to protecting the court's wards, but only in the manner it should: a temporary interruption of custody arising out of an emergency promptly followed by restoration or full due process proceedings in a proper forum.

Compliance with sec. 17.05 can be had with a self-destruct sec. 17.04 order. The court can much easier insure compliance with sec. 17.05 the day of signing the order rather than ten days later and thirty more cases down the docket. The original order can provide a time and date (within ten days) that the child shall be back in possession of the parent, guardian or conservator from whom it was taken, unless prior to this time and date it shall have been otherwise ordered by a court of continuing jurisdiction in a suit affecting parent-child relationship.

It is amazing what the ticking of this self-destruct provision does for all concerned. The court can move on to other matters relieved of any follow up ten days hence. The clerk has already asked DPW the identity of any existing court of continuing jurisdiction. The responsibility, now, is wholly fixed upon the original movant to get a suit filed in the proper court and an appropriate sec. 11.11 ex parte order or custody will automatically revert by virtue of the original 17.04 order.

IX. MISCELLANEOUS PROVISIONS

A. MODIFYING THE 10-DAY ORDER

Sec. 17.06 affords those originally in possession of the child, parent, managing conservator or guardian, an opportunity to secure a hearing for modification of the sec. 17.04 order. The ten-day period is not static but open to change as indicated, the means thereby afforded for a fuller development of the proper facts for the court at any time, then followed by a modification of the order as may be for the best interest of the child. Notice of any such second hearing must be given to the person making the sec. 17.01 seizure. The two day minimum notice requirement of TEX. R. CIV. P. 680 would appear to apply.

B. 10-DAY ORDER NOT STAYED BY APPEAL

Under sec. 17.07 an appeal will not stay the sec. 17.04 order. If the Chapter 17 limitations are being observed, it would be unusual for any appellate review to be sought. However, any continuing abuse of Chapter 17 and its dubious due process provisions, as we saw in the period of 1974 and 1975, will undoubtedly see an appeal and sound constitutional questions raised.

C. A CHAPTER 17 COURT NOT A COURT OF CONTINUING JURISDICTION

> "The court having jurisdiction of a child under this Chapter (17) does not retain continuing jurisdiction within the meaning of sec. 11.05 of the Code," sec. 17.08 TEX. FAMILY CODE ANN.

In most Texas jurisdictions the probabilities are that the court in which the sec. 17.02 petition was filed will later become the court of continuing jurisdiction in a suit affecting the parent-child relationship filed within the ten days allowed. However, the sec. 17.02 petition does not make the court one of continuing jurisdiction, nor does the granting of a sec. 17.04 order thereafter, sec. 17.08. The intervenor moving in the emergency situation does not need to first weigh all considerations for selection of a court of continuing jurisdiction, but free to enter the most convenient court. And, a perhaps otherwise reluctant, but readily accessible, court is made more receptive to the short term proceeding.

D. PROTECTION OF THE OFFICER FROM CIVIL LIABILITY

> "A person who takes possession of a child under sec. 17.01 of this Code is immune from civil liability if, at the time possession is taken, he had reasonable cause to believe there was an immediate danger to the

> physical safety or emotional well being of the child." Sec. 17.09, TEX. FAMILY CODE ANN.

Desirable encouragement toward protection of children in need is given by sec. 17.09, with immunity to an authorized officer to civil liability for the taking of emergency possession of a child conditioned that the officer had reasonable cause to believe that there was an immediate danger to the physical safety or emotional well being of the child. A legislative omission in 1973, and the amendment in 1975, in sec. 17.01, here results in anomaly. The officer taking possession of the child must do so either to protect the child from immediate danger to the child's health or physical safety, but he is immune from civil liability only if he acts under a reasonable belief of an immediate danger to the child's physical safety or emotional well being.

This immunity is similar to that granted the examining physician, sec. 35.04(c), and the person reporting child abuse, sec. 34.03. Hopefully, therefore, it will be construed broadly to ameliorate the inconsistency between grounds in sec. 17.01 and beliefs in sec. 17.09; encourage the identification of the child in need of protection; and, secure prompt accordance of protection.

CONCLUSION

Basic to the family structure and our social order, the right of parents to custody of their minor children is one of the natural rights incident to parenthood, a right afforded by law and sound policy. 59 AM JUR 2d 107. It is an inherent right ...not created by the state...and the law should not disturb the parent-child relationship except for the strongest reasons. See Bough v.Bough, 263 S.W.2d 573 (Tex. Civ. App.--San Antonio, 1953, no writ). Only when it becomes clear that the parent has surrendered or forfeited the right to custody by his misconduct or nonconduct should the parent-child relationship be invaded, Mitchell v. Davis, 205 S.W.2d 812 (Tex. Civ. App.--Dallas, 1947, writ ref'd).

In this context, Chapter 17 is an extraordinary proceeding in which the restrictive legislative language must be given full significance.

There must be an *emergency*. More important, it must be an emergency that cannot be alleviated in the existing custodial setting. The officer of the *limited class* must have *reasonable cause* for such a conclusion; intervene only to protect from *immediate* danger to physical safety or health; *deliver* the child with a full disclosure *immediately* to the court. The court having the child identified should proceed to *hearing without delay* to determine the *immediacy* of the child's need of court protection. Finally, the protection granted should be *short term* merging into orders of a court of continuing jurisdiction or ended by restoration of the child. Underlying it all there should remain the statutory quality of temporary, transitory proceeding justified only by a grave emergency.

Looking ahead, Chapter 17 needs to be re-examined by the coming Legislature. The standards given the officer for taking possession of a child under sec. 17.01 are vague and not helpful.[1] The enumerated classes of officers authorized to intervene and seize a child need re-thinking. The means the officer may use to effect the seizure of the child should not be left to conjecture. For all the urgencies of its sounds, the requirement that a child be delivered immediately to the court and a petition filed immediately, probably should be spelled out in hours and days as with detention hearings in sec. 54.01 and comparable statutes of other states. Caution suggests there be a time limitation between the filing of the petition and the hearing that follows. And, constructive as it is, new sec. 17.05(b) will undoubtedly need some more tightening of language as we gain actuarial experience and develop mortality tables on the life expectancy of Chapter 17 proceedings. It may be that old 17.04 orders will continue to bear distressing similarity to old soldiers, never dying but fading away on the courts' dockets.

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[1] It is ironic that we are able to predict with relative accuracy what child will be coercively removed, but unable to define save in vague and open-ended terms when and why he should be removed. *See New York Joint Legislative Committee Report on Court Reorganization*, 3442.

PROTECTIVE CONSERVATORSHIP

JUDGE ENRIQUE H. PĒNA, El Paso
Court of Domestic Relations

September 1976

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PROTECTIVE CONSERVATORSHIP

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PROTECTIVE CONSERVATORSHIP

Judge Enrique H. Pēna

I. SCOPE OF ARTICLE.

This article represents the author's effort to set down in a logical pattern his understanding and interpretation of the basic concepts, principles and philosopy of Chapters 11, 12 and 14 of Title 2, Texas Family Code.

The primary objective of this article is to contribute to the literature on protective services to be used successfully by lay and professional groups. This article is not meant to be an exhaustive study of the topics covered. Rather, the author hopes that the material can be used as a starting point or quick reference, if you may, which will lead to further research and study.

II. INTRODUCTION.

The 1973 revisions which gave birth to our present Family Code, together with the subsequent amendments of 1975, have been subjected to searching criticism and reappraisal. Texas practitioners, members of the judiciary, social and welfare personnel have had to adapt themselves not only to new concepts found in the Code, but, to new terminology. The important fact is that the Code has provided all the different disciplines dealing with children with a fundamental tool to aid in the preservation of family life.

The State has enacted laws to protect children and has set up the legal machinery through the courts for judicial enforcement of these laws. The modern child protective agency holds in reserve the right to exercise this authority through the use of the courts. Once the decision to exercise the authority of the court is made all provisions of the Family Code come into play.

The maltreatment of children is as old as recorded history. For hundreds of years society has been convinced that their treatment of children was beneficial to the community and perhaps to the children themselves. Today, in the 1970's, we believe our views are enlightened; that American society is a child-oriented society! The issue arises why then is our society constantly generating neglected and abused children? Quite frankly because we are not a child-oriented or family-oriented society. Not only do we see parental neglect, we are experiencing community neglect. Why is this happening? Simply because the law and the courts cannot produce good parents -- responsible parents.

More important, the law has not required those agencies responsible for the protection of children to be accountable for their actions. While we may have acquired a great knowledge in the science of understanding human behavior -- we have failed, whether we want to admit it or not, to keep pace in the development of services which will put this knowledge to its greatest use. The lag between knowledge in the field of social science and the practical application of this knowledge through service is all too familiar and commonplace. In order to do a truly effective job, protective services must seek and obtain the cooperation of other services and other agencies in the community. Every health and welfare activity in the community may and does, in varying degrees, contribute to protective services. But of all the agencies and services in the community none has closer relationship with the child protective agency or plays a major role in the total process of child protection than does the court. Why is this true? Simply because there can be no child protective services without a cooperative role between the court and the child protective agency. This cooperation must be based on mutual respect and understanding of their respective responsibilities. This is the essence of genuine, productive and effective cooperation. Each agency must have an abiding respect for the other's capacity to contribute to and share in protective services. If we can foster this respect, then the functions and methods are meaningful -- Title 2 of the Family Code makes this attempt and endeavor.

This article is limited to the legal principles applicable in the initiation of suits affecting the parent-child relationship, discussing such topics as venue, continuing jurisdiction, jurisdiction over non-residents, the relationships between the child and mother and father. Also discussed will be the general concept of conservatorship, together with all rights, privileges, duties and powers of the different types of conservatorships. Support, enforcement of support, modification of court orders and habeas corpus will also be covered.

III. SUITS AFFECTING PARENT-CHILD RELATIONSHIP.

A. GENERAL PROVISIONS.

1. Definitions.
It is necessary to have an understanding of the terminology that is contained in the Code.

a. Child or Minor.
Any unemancipated person under 18 years of age.

b. Court.
Any district court or special courts of limited jurisdiction, such as, courts of domestic relations or juvenile courts.

c. Parent.
The mother, man to whom child is legitimate, adoptive mother or father. Definition excludes man as to whom child is illegitimate or parents whose rights to child have been terminated.

d. Parent-Child Relationship.
Simply a codification of the law that recognizes parents as natural guardians of the persons of their minor children, as responsible to the state for their well-being. The law, partly to aid in the fulfillment of these obligations and partly by way of recompense, has given parents certain authority over their children. Thus, we have a relationship of rights, privileges, duties and powers of parent. 44 TEX JUR 2d, PARENT AND CHILD Sec. 2.

e. Suit Affecting the Parent-Child Relationship.
Invoking legal protections for children poses many problems. One area of concern when speaking of the parent-child relationship relates to the rights of children versus rights of parents. In our culture we accept the premise that the custody, care and nurture of the child rests first in the parents. However, if there is a failure of this responsibility we accept that the state may intervene in the parent-child relationship, thus the "suit affecting the parent-child relationship." Children have a right to the protection of the state against the consequences of parental deficiencies.

The "suit affecting the parent-child relationship" is a departure of past procedure where the welfare of children were litigated piecemeal, i.e. separate actions. We now have a single procedure to litigate custody, support, visitation, termination, adoption, in a unitary action.

f. Managing Conservatorship.

The term sounds mysterious and baffling; it has caused widespread criticism. The term simply means the custodian of the child, embracing the sum of parental rights with respect to the rearing of a child. These rights may be limited by court order which allows access to a child or further limited by rights of a possessory conservator.

g. Possessory Conservatorship.

The term can best be understood if we relate to that parent or person having access (visitation) to a child. As with managing conservatorship, the rights, privileges, duties and powers may be limited by a court.

h. Illegitimate Child.

A new definition is that of an "illegitimate child." The fundamental concept is that the term "illegitimate child" refers to the status of the child. Blackstone defined an illegitimate child as one born out of wedlock. Blackstone Commentaries, i. 442; ii. 247. The term "illegitimate child" has been used interchangeably with "born out of wedlock", "born out of lawful matrimony", and "bastard", which refer exclusively to the status of the child, and not to the status of the mother and her husband. Disputed Paternity Proceedings, Vol. 1, Sec. 1.02, Schatkin, 1975.

Texas defines "illegitimate child" as one who is not and has never been the legitimate child of a man and whose parent-child relationship with its natural mother has not been terminated by a court. This definition would include a child born to a married woman, but not begotten by her husband.

In Texas, the presumption of fact of legitimacy of child is one of strongest known to law. To bastardize a child born of lawful wedlock most clear and conclusive evidence of nonaccess is required. Schlang v. Schlang 415 SW 2d 28 (Tex. Civ. App. Hous. 1967 reh. den. err. ref. n.r.e.).

The case of Davis v. Davis, 521 SW 2d 603, held that testimony of spouses on matter of nonaccess is admissible, being clearly best evidence of that fact. (Case of first impression.).

2. Suit Authorized; Scope of Suit.

Protection of children through use of legal procedures is imperative in situations of high risk to children. Invoking legal protections for children victims of neglect and abuse poses many problems. These are problems that can best be resolved through legal proceedings. Legal issues relate to the rights of children versus the rights of parents; advocacy roles; demands of due process and selection of the proper judicial forum. The legal process is a positive force in the interest of children -- how the law works for the people and for the community. This is why we need the law. We need to protect children and this can only be accomplished by invoking the jurisdiction of the courts. The Court can become a social service worker's best friend if it is used properly. The important thing for social workers to understand is to learn to use the law effectively -- not to shy away from it. Most of the problems seem to be rooted in the fact that social service workers and other people working with abuse and neglected children, simply don't know their business when they come into court. They may be excellent social workers, excellent trial lawyers, but they don't seem to know the rudiments of the law.

Chapter 11 authorizes the filing of a suit affecting the parent-child relationship. But the important question is when should the suit be filed? That is, when should the law be used -- when should it be invoked? We can all agree that the jurisdiction of the court must not and should not be invoked in every case. My belief is that the court should be used only in those cases where the court becomes an instrument to impress on a family the changes that have to be made in order to protect the children and most important, keep the family together. If this is done, there is an understanding between the social worker and the court, which in turn, makes that social worker an instrument of the court. The social worker becomes the emissary of the law in seeing that protective services/plans are carried out.

Protective services for children are the real dividends from the positive use of the law.

The code authorizes the joinder of remedies in a suit affecting the parent-child relationship. Those matters which may be joined are: managing conservatorship, possessory conservatorship, support of children, paternity, voluntary legitimation, termination proceedings and adoption of children. The court is authorized to require joinder of all issues affecting the parent-child relationship. TEX. FAM. CODE ANN. Sec. 11.02(b).

In the area of protective services this section is quite important in that great latitude is given the court to determine what is in the best interests of children. Example: Suit is filed by DPW to terminate parent-child relationship. Court, after hearing, refuses to terminate, but determines best interest of child requires removal. Court appoints DPW managing conservator, parents possessory conservators. Court further enters TRO's, visitation schedule and support orders. All in one suit.

It is important to keep in mind that the use of the court is always intended to be a constructive step designed to protect the child from harmful conditions or it may be used as an aid where study has indicated the need of a more authoritative approach.

3. Venue.
    a. Venue and Jurisdiction Distinguished.
    Venue means the place where a cause is to be tried. It signifies the county in which a plaintiff has the legal right to institute and maintain his suit. The term "venue" and

"jurisdiction" are generally confused. 59 TEX. JUR. 2d Venue, Sec. 1.

Jurisdiction is the power to hear and determine issues of law and fact involved in a case. 15 TEX. JUR. 2d Courts Sec. 45. Jurisdiction is conferred on courts by the constitution and the statutes. 34 TEX. JUR. 2d, JUDGMENTS Sec. 265.

b. General Rule.
Suits affecting the parent-child relationship must be brought in county where child resides. TEX. FAM. CODE ANN. Sec. 11.04(a).

(1) Exceptions

(a) Adoptions
Suits for adoption may be brought in the county where child resides, petitioners reside, or where placing agency is located if child placed by agency. TEX. FAM. CODE ANN. Sec. 11.04(b).

(b) Emergency suits
Suits for protection of a child from immediate danger may be filed in any court having jurisdiction. TEX. FAM. CODE ANN. Sec. 17.01.

c. Determination of Child's Residence.

(1) General Rule.
Child resides in county where parent(s) reside. TEX. FAM. CODE ANN. Sec. 11.04(a).

(2) Exceptions.

(a) If a managing conservator or custodian appointed prior to January 1, 1974, venue lies in county where managing conservator or custodian resides. TEX. FAM. CODE ANN. Sec. 11.04(c)(1).

(b) If guardian of person appointed, and no managing conservator appointed, venue lies where guardian resides. TEX. FAM. CODE ANN. Sec. 11.04(c)(2).

(c) If parents do not reside in same

county, no managing conservator or guardian appointed, venue lies where parents having custody resides. TEX. FAM. CODE ANN. SEC. 11.04(c)(3).

(d) If child under care of an adult and no managing conservator or guardian appointed, or if appointed, whereabouts unknown, or person who determines residence has left child with adult, venue lies where adult resides. TEX. FAM. CODE ANN. Sec. 11.04(c)(4).

(e) Venue lies where non-resident guardian or custodian resides. TEX. FAM. CODE ANN. Sec. 11.04(c)(5).

(f) If none of above, venue lies where child is found. TEX. FAM. CODE ANN. Sec. 11.04(c)(6).

4. Continuing Jurisdiction.

a. Introduction.

The first juvenile court was established in 1899 in Cook County, Illinois. Child protective agencies who played a major role in promoting legislation for these socialized courts, came into being 25 years earlier! The original approach was to create a special court to handle only matters relating to children. The Court and Protective Services, The American Humane Association, Vincent De Francis.

Unfortunately this was not the case in Texas, and in fact is still not a reality. It is not uncommon for one court to hear a divorce suit and determine custody matters; another court to hear delinquency proceedings against a child involved in the original custody matter; another court determine guardianship of the person or estate of that same child and still another court be asked to terminate rights of parents.

The concept that all court proceedings related to family life should be placed under the jurisdiction of a single family court has been often discussed, but rarely has it progressed beyond the discussion stage. The consolidation of jurisdiction over all family related causes of actions would benefit the litigants, their attorneys and the court system itself. See: The Family Court: When Properly Defined, It Is Both Desirable And Attainable, JOURNAL OF FAMILY LAW, Vol. 14, No. 1, (1975).

While the concept of "continuing jurisdiction" is not totally new in Texas, the approach to consolidate jurisdiction in family matters is new.

b. General Rule.
Once a court acquires jurisdiction of a suit affecting parent-child relationship, court retains jurisdiction of all matters in connection with the child, except on transfer. TEX. FAM. CODE ANN. Sec. 11.05(a).

(1) Exceptions.

(a) Adoption
Final decree of adoption ends court's continuing jurisdiction. Reason for this is to preserve confidentiality of adoption records. TEX. FAM. CODE ANN. Sec. 11.05(b).

(b) DPW misinforms
If DPW, correctly or incorrectly, informs a court that no other court has continuing jurisdiction and petition states no other court has continuing jurisdiction, that court acquires jurisdiction. TEX. FAM. CODE ANN. Sec. 11.05(c).

(c) Paternity.
Jurisdiction terminates in paternity suits when order dismissing suit with prejudice, or order declaring alleged father not father of child, or order denying voluntary legitimation, becomes final. TEX. FAM. CODE ANN. Sec. 11.05(d)(1).

c. Extraterritorial Effect.

Is Sec. 11.05(a) extraterritorial in its scope? That is, once a Texas court exercises continuing jurisdiction over children, will that jurisdiction be recognized by other courts in other states? There are three Texas cases which may provide the answer

In Dowden v. Fischer, 338 SW 2d 534 (Tex. Civ. App.-1960, no writ), a divorce was granted in Nevada and custody of the children given to the father. Later the mother filed in the same court in Nevada and asked for a change of custody. At the time the father and children resided in Texas, and he was given notice of hearing by mail. Father did not answer or appear. Custody was awarded to mother. Texas court gave full faith and credit to Nevada decree stating that the Nevada court had continuing jurisdiction, and personal service on father was not required for Nevada court to modify decree by granting custody and control of children, who were then domiciled with their father in Texas, to mother.

In the second case, Bull v. Wilson, 362 SW 2d 662 (Tex. Civ. App., 1962, no writ), divorce was granted in Illinois. Mother was given custody of child. Mother left child with father and came to Texas. Later, she returned to Illinois, got child and returned to Texas. Father instituted proceedings in Illinois for change of custody. Mother served in Texas with non-resident citation. Mother failed to appear or answer. Custody given to father. Father filed writ in Texas court. Texas court gave full faith and credit to Illinois decree. Illinois statute provided for continuing jurisdiction over child custody matters.

In the third case, Follak v. Brown, 530 SW 2d 882 (Tex. Civ. App., 1975) the Texas court was faced with a South Carolina divorce and custody decree which recited that the "Court shall and does retain jurisdiction of......the minor child, ...for further proceedings, if such became necessary." This language was sufficient for the Texas court to decide that South Carolina had continuing jurisdiction of the child.

5. Parent-Child Long-Arm Statute.
   a. Introduction.
      No attempt will be made in this subsection to discuss Sec. 3.26 TEX. FAM. CODE ANN. or Rule 108 Tex. R. Civ. P., but they should not be overlooked. It should also be noted that if jurisdiction is acquired under Sec. 3.26 (marital long-arm statute), jurisdiction is also acquired under Sec. 11.051 (parent-child long-arm statute), if applicable.

      The concept of a long-arm statute in suits affecting the parent-child relationship is new in Texas law. It follows the trend moving to expand jurisdiction over non-residents having contacts, ties or relations with the State. This should be so since the State has a substantial interest in domestic relations, both in the financial area and in the area of protecting children. Abandoned spouses need not be required to follow the other spouse from state to state to obtain relief when the dispute could adequately be settled in the home state. See: Expanding Jurisdiction Over Domestic Relations Causes, Knowles, and Using Long-Arm Jurisdiction To Enforce Marital Obligations, Anderson, JOURNAL OF FAMILY LAW, Vol. 11, No. 1 (1971).

   b. Specific Jurisdiction Over Non-Resident.
      (1) Conception.
          If the child is conceived in Texas and service is required on a parent, alleged or probable father of child, courts of Texas may now exercise personal jurisdiction over that person even though that person is a non-resident or domiciliary of Texas.

          In situations where jurisdiction over a non-resident is on grounds asserted of conception, Texas courts will have to use restraint and scrutinize the facts of each case before it.

Assume that a non-resident couple is traveling or vacationing in Texas and a child is conceived in Texas. Mother returns to Texas. Should Texas courts allow that mother to avail herself of the provisions of the long-arm statutes? Does this State have a sufficient interest simply because child was conceived in Texas?

Suppose that the same mother returns to Texas, establishes residence for purposes of a divorce. There was no cohabitation of the parties in Texas, nor has the husband had any type of contact with his spouse while she has resided in Texas. Should a Texas court allow this spouse to avail herself of the provisions of Sec. 11.051(1)? Does Texas have a superior interest in the protection of that child, such as in the area of support?

(2) Presence of Child in State.
If the child resides in Texas as the result of acts or directives or with approval of person on whom service is required, Texas courts may exercise personal jurisdiction over that person. TEX. FAM. CODE ANN. Sec. 11.051(2).

Once again Texas court will have to scrutinize the facts of each case and determine whether the interests of Texas are superior to those of the state of residence of the non-domiciliary.

What will constitute acts, directives or approval will be questions for courts to decide. It is clear that if a mother and child are ordered or sent to Texas by the husband who pays for cost of transportation, he would be subject to the long-arm statute as he has directed and approved (ordering and sending) their coming, and he has acted (paying their way). If that spouse does not support the child, Texas has a vastly superior interest than any other forum.

Suppose that a resident of New Mexico moves to Texas with her child as a result of her spouse using physical violence on her person and physically abusing the child. Are these "acts" (physical violence) enough to invoke personal jurisdiction of the non-resident spouse?

(3) Residence of Non-Resident in State.
If the person on whom service is required has resided with the child in this state, personal jurisdiction may be acquired over that person. TEX. FAM. CODE ANN. Sec. 11.051(3).

The language of this particular section is broad. There is no specific period of residence required in this state with the child. Nor is the residence required during any specific period of time, such as the last state of residence or the like. Here too, the Texas courts are going to have to examine each case on its own facts.

Suppose person resides with child in Texas during first five years of child's life, then leaves Texas for ten years. The child returns to Texas with mother. Can a Texas court acquire jurisdiction over non-resident parent merely because parent resided with child more than ten years before in Texas? I doubt it.

c. Broad Jurisdiction Over Non-Resident.
(1) Due Process
If there is any basis consistent with the consitutitons of this state or the United States for the exercise of the personal jurisdiction, Texas courts can acquire personal jurisdiction over non-residents. TEX. FAM. CODE ANN. Sec. 11.051(4).

This particular section grants broad claims for jurisdiction and provides great flexibility for courts to grant judgments. This particular section will require and necessitate court interpretation and decisions in its application.

Whether the statute meets expressed standards of substantive and procedural due process will have to be determined by appellate decisions.

There are several cases which have been decided which determine what contacts, ties or relations satisfy constitutional requirements.

In the case of Mitchim v. Mitchim, 518 SW 2d 362 (Tex. Sup. Ct., 1975) the court stated that the test for determining whether the rule permitting extraterritorial exercise of jurisdiction permits acquisition of personal jurisdiction in a particular case, it is necessary to "discover the limits of personal jurisdiction constitutionally allowed, then decide whether the case before us falls within those limits."

The court goes on to state that it is necessary to establish: "(1) that application of the rule to the present case would violate the due process clause of the United States, or (2) that the nature or facts of the case do not meet the requirements of the rule."

The court in addressing itself to the standards to be applied in determining whether there are sufficient "contacts" to assert jurisdiction, stated: ".....due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' "

The "minimum" contacts in that case were the sending of mortgage payments and money to ex-wife who resided in Arizona.

The second case, Fox v. Fox, 526 SW 2d 180 (Tex. Civ. App., 1975) an action was brought to enforce New Jersey judgment obtained against defendant, Texas resident for accrued and unpaid alimony ordered in New Jersey divorce decree. The court held that where defendant, resident of Texas, had consistently made child support payments to wife in New Jersey, defendant had sufficient contact with New Jersey to satisfy traditional notions of fair play and substantial justice to permit the New Jersey court to assert in personam jurisdiction over non-resident.

In a California case, the Court of Appeals held that telephone communications were simply not enough minimum contacts to satisfy the qualifications for imposing jurisdiction. Inselberg v. Inselberg, (Calif. Ct. Appl. 2d Dist., 1976) 2 FLR 2473.

6. Transfer of Proceedings.

a. Introduction.

Generally in a civil action if venue of a suit has been improperly laid, the remedy of the party complaining is by a plea asserting his privilege to be sued in another county. Tex. R. Civ. P. 86-89.

The defendant may demand a jury on the venue question. The defendant may appeal from an order overruling the plea, while the plaintiff may appeal from an order sustaining a plea of privilege, thereby suspending the transfer of the venue and the trial on the merits.

This complex procedure when applied to cases involving children led to the best interests of such children not being served. Suspension of transfers and trial on the merits of such cases created obstacles to the determination of matters affecting children's welfare.

The venue section coupled with the concept of continuing jurisdiction should reduce litigation greatly. The transfer provisions should be a positive step in reducing protracted litigation in the area of venue and jurisdiction.

b. Mandatory Transfers.

(1) The court must transfer a case on timely motion of any party other than petitioner, if venue is improperly laid in the court and no other court has continuing jurisdiction, to county where venue is proper. TEX. FAM. CODE ANN. Sec. 11.06(a).

Example: Child and parent(s) reside in El Paso County. Suit affecting parent-child relationship is filed in Harris County. No other court has continuing jurisdiction of child. Suit must be transferred to El Paso County, on timely motion.

(2) If a petition or a motion to modify a decree is filed in a court having continuing jurisdiction, if it is shown by a timely motion, by any party, that child has resided in another county at least six (6) months (period need not be continuous or uninterrupted) the court must transfer to county where venue is proper. TEX. FAM. CODE ANN. Sec. 11.06(b).

Example: Child is subject to suit affecting parent-child relationship filed in Dallas County. Child moves to El Paso County and has resided in El Paso County eight months. Motion to modify decree is filed in Dallas County. On timely motion by any party motion to modify must be transferred to El Paso County.

(3) If a petition or motion to modify a decree is filed and it is shown by timely motion that a suit for dissolution of marriage has been filed in another court, all proceedings must be transferred to court where suit for dissolution of marriage is pending. TEX. FAM. CODE ANN. Sec. 11.06(b).

Example: Parents and child reside in Tarrant County. State Department of Public Welfare files suit affecting parent-child relationship. While case is pending, parents and child move to El Paso County where divorce action is initiated. On timely motion all proceedings must be transferred to El Paso County.

(4) If a court has continuing jurisdiction, and DPW correctly or incorrectly, misinforms another court that child is not the subject of a suit affecting parent-child relationship, on motion of any party, court having continuing jurisdiction must transfer. TEX. FAM. CODE ANN. Sec. 11.06(d).

Example: Suit affecting parent-child relationship is filed in Harris County. Similar suit is filed in El Paso County and DPW upon request informs court in El Paso County no other court has jurisdiction (whether correctly or incorrectly). Suit must be transferred to El Paso County.

c. Discretionary Transfers.

(1) If the basis of the motion to transfer is that child resides in another county, and the child has not resided in that county for at least six (6) months, the court may transfer. TEX. FAM. CODE ANN. Sec. 11.06(b).

(2) For the convenience of the parties and witnesses and in the interest of justice, the court, on timely motion of any party, may transfer proceedings. TEX. FAM. CODE ANN. Sec. 11.06(c).

d. Procedure.

(1) Filing.
Motion must be filed on or before answer date. TEX. FAM. CODE ANN. Sec. 11.06(e)

(2) Notice.
Ten (10) day notice must be given to each party. TEX. FAM. CODE ANN. Sec. 11.06(f).

(3) Hearing.
Hearing must be held by court within 30 days after the day of filing the motion.

e. Appeal.
Order transferring or refusing to transfer is not appealable.

7. Commencement of Suit.

a. Introduction.
Proceedings to protect children are instituted daily throughout the United States in juvenile courts by the states, through their children protective agencies simply because these children are not being cared adequately by their parents.

These suits may result in temporary removal of children from their homes and placed in foster care or the rights of parents may be permanently terminated.

Abrogation of parental rights results in various ways: either by operation of law, legislature encroachment, through intentional act of the parent or by court order. It is in the area of voluntary surrender of parental rights and involuntary abrogation through court orders that present problems. Problems begin with the filing of the suit and continue through disposition.

Termination of parental rights by court order over parental objections, is a drastic measure which should be based upon proof of the existence of well-defined criteria and procedures which provide all the protections of due process. See: Termination of Parental Rights--Balancing the Equities, De Francis, The American Humane Association, 1971.

A suit affecting the parent-child relationship is commenced by filing a petition. TEX. FAM. CODE ANN. Sec. 11.07(a).

A request for further action concerning a child who is under the jurisdiction of a court, with the exception of a motion to modify shall be initiated by the filing of a petition. TEX. FAM. CODE ANN. Sec. 11.07(b).

The petition for further action must be filed in the file of the suit affecting the parent-child relationship under the same docket number as the prior proceeding. TEX. FAM. CODE ANN. Sec. 11.07(c).

b. The Petition.

All pleadings affecting the parent-child relationship are now filed in the name of the child or children, with the exception of adoption suits. TEX. FAM. CODE ANN. Sec. 11.08(a). The primary reason for this is to focus on the child's best interest and welfare and remove the adversary atmosphere of prior proceeding where the action was the state versus the parents. In adoption suits the name or names of children should not be used in order to maintain confidentiality.

(1) Contents of Petition.

(a) Statement of jurisdiction.

There must be a statement that court where petition is filed has continuing jurisdiction and that no other court has continuing jurisdiction. TEX. FAM. CODE ANN. Sec. 11.08(b)(1).

The petitioner or the court shall request from DPW identification of the court that last had jurisdiction of the child, unless petition alleges that no court has jurisdiction and issue is not disputed or the petition or motion alleges court previously acquired and retains jurisdiction of child and issue is not disputed. TEX. FAM. CODE ANN. Sec. 11.071(a)(1) and (2).

If a request is made, the department shall identify the court that last had jurisdiction or state that child has not been subject of a suit. TEX. FAM. CODE ANN. Sec. 11.071(b).

Once a request is made, no final order, except a dismissal, shall be entered until information is filed. TEX. FAM. CODE ANN. Sec. 11.07(c).

(b) Information on child.
The name, sex, place and date of birth and place of residence. TEX. FAM. CODE ANN. Sec. 11.08(b)(2).

(c) Information on petitioner.
The full name, age, and place of residence of the petitioner and relationship to child. TEX. FAM. CODE ANN. Sec. 11.08(b)(3).

(d) Information on parents.
The names, ages, and place of residence of the parents, except in adoption suits. TEX. FAM. CODE ANN. Sec. 11.08 (b)(4).

(e) Managing conservator or custodian.
Name and place of residence of managing conservator, if any, or custodian appointed by court prior to January 1, 1974. TEX. FAM. CODE ANN. Sec. 11.08(b)(5).

(f) Guardians.
Names and places of guardians of person or estate, if any. TEX. FAM. CODE ANN. Sec. 11.08(b)(6).

(g) Possessory conservators.
Names and places of residence of possessory conservators, if any. TEX. FAM. CODE ANN. Sec. 11.08(b)(7).

(h) Termination of rights of mother of illegitimate child.
If suit seeks termination of rights between an illegitimate child and its mother, name and place of residence of alleged father or statement identity unknown. TEX. FAM. CODE ANN. Sec. 11.08(b)(8).

(i) Property.

Full description and statement of value of property owned by child. TEX. FAM. CODE ANN. Sec. 11.08(b)(9).

(j) Statutory grounds.
The petition must contain a statement describing action and grounds on which request is made. TEX. FAM. CODE ANN. Sec. 11.08(b)(10).

c. Citation And Notice.

(1) Persons Entitled to Service of Citation -- Mandatory.

(a) Managing conservator.

(b) Possessory conservator.

(c) Persons having access to child under court order.

(d) Persons required by law or court to support child.

(e) Guardian of person or estate of child.

(f) Each parent whose rights have not been terminated or who have not waived service of process.

(g) Alleged or probable father where rights of mother are being terminated, unless identity is unknown or waiver of interest by alleged or probable father is filed.

(h) In paternity suits on alleged father.

(2) Persons Entitled to Service of Citation -- Discretionary.

(a) To any person who has or may assert an interest in child or to unknown father of an illegitimate child. TEX. FAM. CODE ANN. Sec. 11.09(a)(1) through (9) and (b).

(3) Method of Notice.

(a) Termination suits.

Citation on the filing of the petition or notice of a hearing shall be issued and served as in other civil cases. TEX. FAM. CODE ANN. Sec. 11.09(c)(ii). See: Tex. R. Civ. P. 106-108 for requisites of citation.

(b) Other suits affecting parent-child relationship.
In addition to issuance and service as in other civil cases, citation or notice may be given by registered or certified mail. Delivery of citation and copy of petition through the mail must be made to person required to be served. TEX. FAM. CODE ANN. Sec. 11.09(c)(i).

(c) Publication.
Citation may be given by publication as in other civil cases. Notice shall be published one time. TEX. FAM. CODE ANN. Sec. 11.09(d).

d. Guardian Ad Litem.

(1) Introduction.
The creation of the first juvenile court in 1899 found justification in a modified version of the parens patriae theory, that is, that the state was charged with responsibility of children endangered by parental misconduct. Because the juvenile court was to act in place of the parent, it was assumed that it would adequately protect the child. The early defenders of the system took the position that the child appearing before the juvenile court would be sufficiently protected by the good sense of both intake workers and judges. Fairness To The Juvenile Offender, Minnesota Law Review, Vol. XLI (1957), Monrad G. Paulsen.

But the dangers inherent in such a system were recognized by some. Dean Roscoe Pound who described the establishment of the juvenile court in America as one of the most significant advances in the administration of justice since the Magna Carta, was yet moved to say that "The powers of the Star Chamber were a trifle in comparison with those of our juvenile courts." Foreword of Young, Social Treatment In Probation and Delinquency, (1937) p. XXVII, Quoted in In Re Gault, 387 U.S.I.

In the 1960's, stimulated by a growing concern for the rights of adults accused of crimes, the pendulum began its opposite swing. Generally the criticism was aimed at proceedings to determine juvenile delinquency but much of it could have been applied with equal force to proceedings to determine child neglect. The attacks upon the courts shifted from lack of informality; from what had been considered to be an undue emphasis upon legal rights to complaints about the inadequacy of such safeguards. It was suggested that the delicate balance between the social aspects of the court and the legal principles which should guide it was overweighted on the side of informality of procedure with resulting injustice and violations of basic rights.

Three questions arise: Is there a real need for strengthening the rights of children in suits affecting their welfare and future? If there is a need, can Texas courts make more effective use of the guardian ad litem under present law? What problems arise in the present use of the guardian ad litem?

A neglect or abuse proceeding is an unusual one, in some ways perhaps even more so than a delinquency proceeding. It is distinguishable from most other civil litigation. There are usually two parties: the protective agency and the parents. However, the most direct effect is upon a third party, the child. There is a definite need to stress the rights of children independently of information and investigations coming from the parties to the suit as to the child's best interest, by utilizing uninvolved and disinterested parties. The interests of the child are usually not compatible with those of his parents. It may be that the child's interests are not compatible with the agency itself. The child may be but a pawn in a dispute between parties. He should be represented independently.

How then can the courts make more effective use of the guardian ad litem? Texas law already plays an important role in suits affecting the parent-child relationship by making it mandatory in certain cases to appoint a guardian ad litem; in certain other suits it is within the discretion of the court to appoint a guardian ad litem. Once a guardian ad litem is appointed the court should insure that: (1) the appointee be given adequate time to investigate the circumstances of the case; (2) the appointee be given access to all written matters, reports and files on the child; (3) the appointee, as an advocate, and as an officer of the court, should be given ample opportunity to present the child's case to the court; (4) the appointee exert his efforts to secure an ultimate resolution of the case which, in his judgment, will best serve the interests of the child; (5) the appointee should be given the opportunity of taking a position on the issue of whether the child should be removed from the home during the pendency of the legal proceedings; (6) the appointee should be given the opportunity of participating meaningfully in the formulation of the ultimate plan for disposition; (7) the appointee should be compensated for his services; and (8) the appointee should serve as an advocate for the child in the review of the status of the case at periodic intervals, and subsequent modifications.

Personal experience has shown that the appointment of guardian ad litems under our present system has not been effective in protecting children's rights. As a general rule, the newest and youngest members of the bar are appointed, without compensation. These young attorneys are usually appointed a few days before the legal proceedings; they usually do not see the records of the agency until a few minutes before the hearing; as a general rule they never interview the child; they seldom make an independent investigation of the case; they are seldom consulted about dispositions and they never, if seldom, participate in the review process of children in placement.

(2) Mandatory.
In any suit in which termination of parental rights is sought a guardian ad litem must be appointed. TEX. FAM. CODE ANN. Sec. 11.10(a).

A guardian ad litem must be appointed to represent a person entitled to service of citation if such person is incompetent or a child. TEX. FAM. CODE ANN. Sec. 11.10(b).

(a) Exceptions.
No guardian ad litem need be appointed if child is petitioner, attorney ad litem has been appointed for child or if court finds that the interest of the child will be protected by a party to suit. TEX. FAM. CODE ANN. Sec. 11.10(a).

No guardian ad litem need be appointed for an incompetent person or child on whom service is required if that person has executed an affidavit of relinquishment or waiver of interest and has waived service of citation. TEX. FAM. CODE ANN. Sec. 11.10(b).

There is a serious question in the author's mind as to whether an incompetent person or child may expressly waive the issuance or the service of process, and thereby put himself as fully before the court as though personally served. A minor, lunatic, or non compos mentis possesses no capacity to waive the issuance or service of process, and an attempted waiver by him or by his next friend, guardian ad litem, or attorney is ineffective. 2 McDonald, Texas Civil Practice, Citation, Sec. 9.092; Wright v. Jones, 52 SW 2d 247 (Tex. Com. App.

1932); Casanova v. State, 494 SW 2d 812 (Sup. Ct. Tex. 1973).

(3) Discretionary.
In any other suit under subtitle A the court may appoint a guardian ad litem.

The managing conservator may be appointed as guardian if he is not a parent of the child or a person petitioning for adoption of the child or has no personal interest in suit. TEX. FAM. CODE ANN. Sec. 11.10(a).

Whenever the court deems representation necessary to protect the interests of the child an attorney may be appointed. TEX. FAM. CODE ANN. Sec. 11.10(c).

e. Temporary Orders.
(1) Introduction.
There is no room for doubt of the power of a court to enter an order, without notice to the parents, for the safety and well-being of children. Page v. Sherrill, 415 SW 2d 642 (Sup. Ct. Tex. 1967).

The Supreme Court in that case in addressing itself to the court's power stated: "Since the district courts are vested with general supervisory control of minors, they are charged with the profound responsibility of protecting their health and safety. Effective discharge of this responsibility under situations of emergency will sometimes demand immediate action by the courts. Such action may, by necessity, consist of a temporary taking of a child from the possession of its legal custodian, with or without notice, pending a full hearing."

The courts' power to issue temporary orders, especially in those instances without notice to parents, should be used sparingly and with great caution. The court should be convinced that the safety and welfare of the child would be endangered if the temporary order would not be issued. If the court is not so convinced the temporary order should not be issued until such time as a full hearing is scheduled and all facts presented.

(2) Scope of Temporary Orders.
The temporary orders include, and are not limited to, an order for temporary conservatorship; temporary support; restraining any party from molesting or disturbing the child; taking possession of the child; attaching the body of the child; and prohibiting removal of child from the jurisdiction of the court. TEX. FAM. CODE ANN. Sec. 11.11(a)(1), (2), (3), (4) and (5).

(3) Application of Rules of Civil Procedure.
Temporary orders are governed by Tex. R. Civ. P. 680.

(4) Bond.
The necessity of a bond as required by Tex. R. Civ. P. 684 may be dispensed with by the court.

f. Social Study.

(1) Scope.
The court may order the preparation of a social study into the circumstances and condition of the child and home of person seeking conservatorship of child. TEX. FAM. CODE Ann. Sec. 11.12(a).

(2) Preparation and Criteria.
The social study may be made by any person appointed by the court, DPW, or private agency. If an agency is the managing conservator of the child, that agency shall prepare the study. The court establishes the criteria for the study. TEX. FAM. CODE ANN. Sec. 11.12(b).

(3) Evidence.
The social study which must contain findings and conclusions must be filed with the court and becomes a part of the record of the suit; however, disclosure of contents to the jury is subject to rules of evidence. TEX. FAM. CODE ANN. Sec. 11.12(c).

This particular section must be read together with Sections 11.14 and 11.15 which state that the rules of evidence apply as in other civil cases and that the trial's court finding shall be based on a preponderance of the evidence.

Two recent cases, *Magallon v. State*, 523 SW 2d 477 (Tex. Civ. App. 1975) and *D--- F--- v. State*, 525 SW 2d 933 (Tex. Civ. App. 1975), both held that a social study prepared by a caseworker for a county welfare unit was not evidence unless report was properly admitted into evidence.

Is it proper for a court to order the preparation of a social study and view the same prior to the adjudication of the issues involved in the case?

Clearly in juvenile proceedings the juvenile judge may not view the social history report or social service file before the adjudication. TEX. FAM. CODE ANN. Sec. 54.03(d). This statutory scheme creates a bifurcated proceeding in which the facts of the case are presented to the court to establish jurisdiction and thereafter consider the social study to make an appropriate disposition.

It would appear to the author that a procedure such as this affords the necessary protection against the premature resolution of the jurisdictional issues on the basis of legally incompetent material which may be contained in the social study.

Of course once the report is received in evidence in a trial before the court, the inadmissable portions of the report should be disregarded, and it will be presumed that the law did not consider evidence which was incompetent as hearsay. *Alexander v. Clower*, 486 SW 2d 189 (Tex. Civ. App. 1972, no writ).

g. *Jury*.

Except in adoption cases, a jury may be demanded by any party in a suit affecting the parent-child relationship. TEX. FAM. CODE ANN. Sec. 11.13(a).

The jury verdict on the issue of managing conservatorship is binding on the court. All other issues, if submitted, are advisory only. These are: issues on specific terms and conditions of access to child, support of child, and rights, privileges, duties, and powers of conservators. TEX. FAM. CODE ANN. Sec. 11.13(b).

8. Hearing.
   a. The Role of The Juvenile Court.

There is much debate in this country as to what role the court should play in cases involving abused or neglected children: (1) Should the courts be concerned with the treatment and the prevention of social ills? (2) Should the courts be used as an effective resource in treating, even preventing child abuse and neglect? (3) Should the courts only be used to arbitrate disputes and punish public offenses? (4) Must the traditional legal process, yield to, or at least share with, another system in which other disciplines also join in the fact-finding and decision-making, one in which justice is seen, not as blind, but as alert and understanding and compassionate and concerned?

These are the questions that confront us today and which we can find no ready-made answers or solutions.

The role of the court is what the individual judge decides it should be. My personal opinion is that the true aim of the law should be to give us a better way of life. We must view the battered and neglected child as more than a pure legal problem. We must commit ourselves to the ultimate welfare of the child and the parents. This is not to say that I advocate that the traditional process be scraped. But on the other hand I do believe that when dealing with battered and neglected children rules of evidence and the strict adversary system should be relaxed, all to the ultimate benefit of the child and parents.

If we are to view the court as simply an arbiter, the court's power is then limited to "after the fact" matters and ignores an important facet of the court, that is, its great potential for prevention and social change. The court must be understanding, compassionate, and above all forward-looking and involved. The court must reach out to troubled parents before serious abuse or neglect occurs.

Children have been abused since the dawn of history and will continue to be abused and neglected by their caretakers. For the last 15 years we have witnessed a great struggle against child abuse. Those who see this struggle imagine that it appeared by magic, as a result of spontaneous indignation of the people or perhaps through emotional appeal. The truth is, that only through a careful organization will the struggle against child abuse succeed. We must seek and implement successful therapeutic approaches to the problem of child abuse, which approaches must include the juvenile court.

(1) Adjudication.

The first function, that of deciding whether or not the State may intervene in a situation, involves a search for truth, and having found it, making a conclusion. The truth sought is the ultimate facts in a given situation. The conclusion which must be made is whether, considering the facts found, the child should be brought within the power granted the court by statute or constitution. If the answer to this is in the negative, the court is powerless to act, regardless of damage to the child or outrage of the community.

In relation to the total parties and forces in cases of this type, the court is in a sensitive, critical position. It is important for objectivity and fairness that there be no suggestion of sympathy for, or involment with, any party to the proceeding.

The court must not be regarded as an ally of either parents or agencies.

Monrad G. Paulsen, has made this statement:

> "A juvenile court is a court of law -- a court having the power to coerce, if necessary. This point must not be obscured by the humanitarian motives that have moved those who pressed for the court's establishment and who now seek its improvement. The idea of law itself implied that the rules permitting the use of public authority are meaningfully set down and that, in a given case, facts are established that bring the case within an already announced formulation. No one would tolerate a plan of incarcerating all those who would 'benefit' from a term in jail. Children, as well as adults, are entitled to protection from the mistaken, the vicious, the prejudiced, and the tired!' " Justice For The Child, 1962, page 44, Free Press of Glencoe.

It is not until all of the steps in the adjudication phase of the hearing have been accomplished, including a finding of neglect or abuse, that the court has any power to act in relation to the child. This is called jurisdiction over the person. Often the court can't do what ought to be done because it lacks jurisdiction.

(a) Due process and child protective proceedings.

In 1967 Gault swung the pendulum for the revision of traditional juvenile court proceedings. The Supreme Court dictated a revolution in almost every juvenile court in the country. Following the ratification of the Fourteenth Amendment in 1868, the "due process of law" concept was not applied to "personal rights" in proceedings before state courts. The United States Supreme Court early held that the

Due Process Clause did not require that the states conform to the Bill of Rights in criminal proceedings. Hurtado v. California, 110 U.S. 516 (1883). Some nineteen years later the first juvenile court was established. The ensuing years saw the concept of a separate court for children, under various names, adopted across the country. These courts exercised jurisdiction over delinquency proceedings and proceedings for the protection of child victims of parental neglect and abuse. Because the court was to act in place of the parent, it was assumed that it would protect the child adequately. Proponents saw no need for adherence to rules of procedure designed to protect the rights of persons appearing in these courts.

This climate prevailed for a number of years until a point in time at which the "wind of change" in the criminal law passed from evolution to revolution. Extension of federal constitutional guarantees -- as defined by federal standards -- to the states clearly is the means by which the revolution has been wrought.

Given this climate of concern for the rights of individuals, attention was then directed to the juvenile courts. This meant that the end no longer was to be accepted unquestionably as justification for the means if the means violate the spirit of the law.

The work of the child protective worker will not and is not made any easier by an understanding of due process. What hopefully it will do is make it easier to understand the role of the court and to accept their rulings.

The U.S. Supreme Court in In Re Gault gave us a sophisticated definition of due process: "Due process of law is the primary and indispensable foundation of individual freedom. It is the basic and essential term in the social compact which defines the rights of the individual and delimits powers which the State may exercise."

In unsophisticated terms it translates to "fundamental fairness" or what society denotes as "fair play."

In the area of protective services we must of necessity look to the statutory enactments and decisions not only in the area of neglect and abuse, but in other types of cases in order to determine what "due process" requires.

The adjudication phase should require: a competent tribunal; TEX. FAM. CODE ANN. Sec. 11.01(2); a written claim bringing the case within the subject matter jurisdiction; TEX. FAM. CODE ANN. Sec. 11.07 and Sec. 11.08; adequate notice of time and place of hearing; TEX. FAM. CODE ANN. Sec. 11.09; right to counsel; a fair hearing which includes right to submit evidence, and to confront and cross-examine adverse witnesses; TEX. FAM. CODE ANN. Sec. 11.14(a)(b)(c)(e) and (f); the finding of ultimate facts and conclusions bringing case within the subject matter jurisdiction; TEX. FAM. CODE ANN. Sec. 11.15; a transcript of the proceedings; TEX. FAM. CODE ANN. Sec. 11.14(d); and the right of appellate review of the court's decision; TEX. FAM. CODE ANN. Sec. 11.19.

(b) Right to counsel for indigent parents. The enactment of Title II of the Texas Family Code which became effective January 1, 1974, wholly failed to address itself to a rapidly developing area of case law that has received attention for a number of years in both the state and federal courts in recognizing the right to counsel, at state expense, of indigent parents faced with a proceeding to terminate parental rights. The area of case law has developed under the proposition that the Due Process and Equal Protection Clauses of the Fourteenth Amendment require not only that indigent parents in termination proceedings be afforded counsel at no cost, but that they be advised of this right. Journal of Family Law, Vol. 13, Number 2, 1973-74.

Since no provision is made for appointment of counsel for indigent parents in termination cases, it follows that our courts are under no statutory requirement to advise indigent parents of their right to be represented by counsel. While the question of appointment of counsel in termination proceedings has never been squarely decided by the United States Supreme Court, the Court has recognized that the right to raise one's children is of constitutional dimension. In the case of Meyer v. Nebraska, (1923), the Court declared:

> "The problem for our determination is whether the statute, as construed and applied, unreasonably infringes on liberty guaranteed to the plaintiff in error by the 14th Amendment. 'No State..... shall deprive any person of life, liberty or property, without due process of law.'
>
> While this Court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration, and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint, but also

> the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and, generally, to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.' " Meyer v. Nebraska, 262 U.S. 390, (1923).

In 1972, the United States Supreme Court in the case of Stanley v. State of Illinois, in considering the question of due process, used the following language:

> "In considering this procedure under the Due Process Clause, we recognize, as we have in other cases, that due process of law does not require a hearing 'in every conceivable case of government impariment of private interest.' Cafeteria Workers v. McElroy, 367 U.S. 886, 894; 6 L. Ed. 2d 1230, 1236; 81 S. Ct. 1743 (1961). That case explained that 'the very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable and firmly establishes that 'what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by governmental action.'
>
> The private interest here, that of

a man and the children he has sired and raised, undeniably warrants deference and, absent a powerful countervailing interest, protection. It is plain that the interest of a parent in the companionship, care, custody and management of his or her children 'comes to this Court with a momentum for respect lacking when appeal is made to liberties which derived merely from shifting economic arrangements.' Kovacs v. Cooper, 336 U.S. 77, 95; 93 L. Ed. 513, 527; 69 S. Ct. 448, 10 ALR 2d 608 (1949).

The Court has frequently emphasized the importance of the family. The rights to conceive and to raise one's children have been deemed 'essential,' Meyer v. Nebraska, 622 U.S. 390, 399; 67L. Ed. 1042, 1045; 43 S. Ct. 635; 29 ALR 1446 (1923), 'basic civil rights of men,' Skinner v. Oklahoma, 316 U.S. 535, 541; 86 L. Ed. 1655, 1660; 62 S. Ct. 1110 (1942), and 'rights far more precious....than property rights,' May v. Anderson, 345 U.S. 528, 533; 97 L. Ed. 1221, 1226, 73 S. Ct. 840 (1953). 'It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function in freedom include preparation for obligations the state can neither supply nor hinder.' Prince v. Massachusetts, 321 U.S. 158, 166; 88 L.Ed. 645, 652; 64 S. Ct. 438, (1944). The integrity of the family unit has found protection in the Due Process Clause of the 14th Amendment, Meyer v. Nebraska, supra,

> at 399, 67 L. Ed. at 1045, the Equal Protection Clause of the 14th Amendment, *Skinner v. Oklahoma*, supra, at 541, 86 L. Ed. at 1660, and the Ninth Amendment, *Griswold v. Connecticut*, 381 U.S. 479, 496; 14 L. Ed. 2d 510, 522; 85 S. Ct. 1678 (1965).' " *Stanley v. Illinois*, 405 U.S. 645, *(1972)*.

If the natural right of a parent to have custody of his children has constitutional dimensions, can the constitutional requirements of procedural due process and equal protection be satisfied without the appointment of counsel at state's expense for an indigent parent whose right to raise his children is sought to be abridged by the state?

While there are no Texas decisions either under the 1907 Act encompassing the dependent and neglected child or under Title II, Texas Family Code, which require the appointment of counsel for indigent parents in termination proceedings or requiring trial courts to advise indigent parents that they are entitled to the appointment of counsel, other states have rendered opinions which should not be overlooked.

In a New York Court of Appeals case it was held that despite a silent statute, a parent in a neglect proceeding which may result in loss of custody had the right to counsel and, if indigent, to appointed counsel, and the right to so be advised. The New York Court pointed out:

> "In our view, an indigent parent, faced with the loss of a child's society, as well as the possibility of criminal charges..., is entitled to the assistance of counsel. A parent's concern for the liberty of the child, as well as for his

> care and control, involves too fundamental an interest and right..., to be relinquished to the state without the opportunity for a hearing with assigned counsel if the parent lacks the means to retain a lawyer. To deny legal assistance under such circumstances would--as the courts of other jurisdictions have already held....constitute a violation of his due process rights, in light of the expressed statutory provision for legal representation for those who can afford it, a denial of equal protection of the laws as well." In re B, 285 N.E. 2d 288 (1972).

The California case of Cleaver v. Wilcox, (1972) which involved a class action brought by a mother of a minor child on the basis of her indigency, claiming that she was deprived of her right to appoint counsel in violation of the Due Process and Equal Protection Clauses of the 14th Amendment,held that equal protection requires that appointed counsel be provided to indigent persons in termination proceedings, stating:

> "Under these circumstances, whether the proceeding be labeled as 'civil' or 'criminal' it is fundamentally unfair and a denial of due process of law for the state to seek removal of the child from an indigent parent without according that parent the right to assistance of court-appointed and compensated counsel. Where there are contested issues of fact a....proceeding is an adversary trial requiring all the skill of the legal practitioner. Since the state is the adversary--a circumstance distinguishing....proceedings from divorce and domestic relations litigation between

> private parties--there is a gross inherent imbalance of experience and expertise between the parties if the parties are not represented by counsel. The parent's interest in the liberty of the child, in his care and in his control, has long been recognized as a fundamental interest....such an interest may not be curtailed by the state without a meaningful opportunity to be heard, which in these circumstances includes the assistance of counsel. And, since criminal charges against the neglectful parent are always a possibility..., the assistance of counsel is especially important to guard against unknowing waivers of the privilege against self-incrimination." (Emphasis supplied.) Cleaver v. Wilcox, USDC N CALIF., 3/22/72, 40 USLW 2658.

The case goes on to state that since the interest at stake is fundamental, the classification as to assistance of counsel between those who can and those who cannot afford a private attorney violates the Equal Protection Clause unless the state demonstrates a compelling interest in maintaining the classification. In this particular case the only state interest seriously raised was the avoidance of expense of compensating counsel, but the Court held this is not a compelling interest especially where the state already provides appointed counsel as a matter of right in criminal trials, in juvenile court proceedings and in proceedings seeking the involuntary commitment of persons suffering from mental illness.

Title III, Texas Family Code, requires that juvenile courts appoint an attorney to represent the interest of any child coming within its provisions if the child is not represented by an attorney or if the court determines that the child's parents or other person responsible for his support is financially unable to employ an attorney to represent the child. The Code further provides that the juvenile court may appoint an attorney in any case in which it deems representation necessary to protect the interest of the child. Any attorney so appointed by the Court to represent the interest of a child must be paid from the general fund of the county in which the proceedings were executed. TEX. FAM. CODE ANN. Sec. 51.10.

In another California case, In re K, the California Court of Appeals ruled that an indigent parent has the right to court-appointed counsel in an appeal from a court order terminating custody and parental rights even though there was no expressed statutory provision for appointment of counsel on an appeal. The Court noted that courts have inherent powers to give relief and assistance to indigent litigants and that the father's potential loss was great and that he was entitled to court-appointed counsel, compensated at public expense. The Court said:

> "....There are decisions that in appeals in dependency proceedings, there is no denial of due process or equal protection of the laws in denying court-appointed counsel on appeal....But the judgment in the case before us would do much more than declare dependency. It would sever forever the parental bond and would make appellant's child eligible for adoption without the father's consent....
>
> The relationship of parent and child is to be found at the very

> fundament of society, and a parent's interest in the welfare care, custody and control of the children is elemental reality...." In re K, 105 Cal. Rptr. 209 (1972).

Two recent cases, Danforth v. State Department of Health & Welfare, 303 A2d 794 (1973) and Friesz v. State of Nebraska, 208 NW 2d 259, (1973), decided by the Supreme Courts of the states of Maine and Nebraska, respectively, held that procedural due process required that counsel be appointed at state's expense to represent indigent parents in proceedings to remove a child from parent's custody. It is of interest that in both cases there was no stautory authority for the appointment of counsel in termination proceedings involving indigent parents or for the payment for such services.

In the Danforth case the Court in addressing itself to procedural safeguards stated:

> "There is no single set of procedural safeguards that may be applied, as a standard of due process, in all judicial proceedings. Due Process is a flexible concept, to be applied in any action in a manner which is meaningful and appropriate in terms of the nature of that proceeding, with the ultimate objective of guaranteeing fairness in all judicial actions." 303 A2d 794 at 797.

The Court went on to state:

> "In a neglect proceeding the full panoply of the traditional weapons of the state are marshalled against the defendant parents. The Department is designated to represent the state at the hearing but may,

> at its option, request that the County Attorney represent the state as he would in criminal prosecutions. The Department has access to public records concerning the family, the services of professional social workers to investigate the family situation and to give testimony at the hearing, and the Department's representative at the hearing has knowledge and experience in legal proceedings, subpoena powers, familiarity with the law of evidence and the ability to examine witnesses.
>
> The crucial issues in a neglect proceeding may be difficult to grasp and consequently difficult to refute for an uneducated and unsophisticated department may include that of psychologists whose jargon is usually beyond the understanding of the ordinary person. The statement in *Powell v. Alabama*, 287 U.S. 45, S. Ct. 55, 77 L. Ed. 158 (1932), that 'even the intelligent and educated layman has small and sometimes no skill in the science of law' would apply to neglect proceedings in the same manner as it applies to criminal prosecution. The average parent would be at a loss when faced with problems of procedure, evidence, cross-examination. Statistical studies conducted in other jurisdictions indicated markedly different results between neglect proceedings where the parent has assistance of counsel and those proceedings where the parent is without counsel...." 303 A 2d 794, at 799.

It is submitted that under Title II,

Family Code, indigent parents in termination proceedings not only have the right to be represented by assigned counsel--but that they have the further right to be advised of that right, even in the absence of statutory authority. Such a denial is a travesty in a state dedicated to affording equal justice to all and special privileges to none in the administration of its laws relating to the termination of the parent-child relationship. There can be no equal justice where the kind of trial parents get depends on the amount of money they have. Destitute parents must be afforded adequate and effective representation as parents who have financial means.

(2) Disposition.

The second primary function of the court is to determine what is to be done in a given situation. It is called the disposition. This phase has been referred to as the "heartbeat of the juvenile court." Disposition Hearings: "The Heartbeat Of The Juvenile Court," Juvenile Justice Textbook Series, Lindsay G. Arthur and William A. Gauger.

The powers of the court at this phase are both awesome and broad. The court may require nothing; yet it may permanently terminate all parental rights. Unfortunately there is little criteria available to guide the judge in reaching the ultimate decision. The only limitation is restricted to an abuse of discretion. Matters of disposition are left to the "sound discretion" and "sound judgment" of the court.

In protective services the court must consider the nature of the family problems that produced the neglect or abuse; the need to protect the child must be considered, and the prognosis for success and process in helping the parent effect change needs careful consideration.

Courts must be careful not to make dispositions in the sterile confines of the law. What is needed is a blending of the contributions of law, social work, medicine, psychiatry, psychology, public health and other related fields. The court is the proper forum for this blend. The effectiveness of this blend will depend on the quality of input.

If the dispositional phase is the "heartbeat" of the juvenile court and if there is an interdisciplinary approach to the problems, then we have the wisdom to know what to do, the skill how to do it, and the service to do it.

The ultimate responsibility and role of the court in child protective services is to care for the child, to understand the child, his parents and their problems, and most important, to protect the child from harm, and meet the needs of the child.

b. Preparation of Case By Social Worker.

(1) Introduction.

This section is intended to stimulate the interest of those social workers who have had no legal training or have no legal consultation available to them in the preparation of their cases. CAVEAT: This section is not to be considered as an exhaustive treatment of the subject matter. The suggestions come from the author's personal experience as county attorney and juvenile judge.

(2) Making A Record.

The first principle that social workers engaged in child protection work should adhere to is: EVERY PROTECTIVE SERVICE CASE HAS A POTENTIAL FOR COURT ACTION. Therefore, the building of a legally-usable record of facts begins at intake. The worker should explore all resolutions of neglect or abuse, whether the same are merely nonjudicial or for the purpose of laying a foundation in the family case file should court intervention become necessary.

The worker must bear in mind that once a decision has been made to go to court, the county attorney must prepare and file pleadings in order to establish jurisdiction, which information will be obtained from the records of the worker who in essence is the supplier of the information. If the facts are not in the record to establish jurisdiction, the county attorney has no case to file.

The second principle is: THE RECORDS SHOULD BE ACCURATE, VERIFIED, UNBIASED AND WELL-DOCUMENTED.

The worker must realize that the records will be available to the parent's attorney through discovery procedures. If these records are inaccurate, unverified, biased, or if they contain conclusions not based on fact, that worker can expect damaging cross-examination.

Experience has demonstrated that those social workers who make it a practice to take informal case notes, immediately after the occurrence of a fact, will be able to refresh their memory of significant observations, statements, inconsistencies and ideas, than the worker who attempts to reply on his memory.

In short, all kinds of observable information should be recorded precisely.

The third principle is: DON'T MAKE CONCLUSIONS OUT OF SPARSE FACTUAL INFORMATION.

Conclusionary reports, based on worker-client feelings, diagnosis without documentation will result in strained social work-law relationships and the exclusion from evidence of the very facts which may protect a child.

The fourth principle: PRESERVE ALL PERTINENT EXHIBITS IN THE CASE FILE.

The social worker in the process of working with the family will encounter material that should be preserved in the file. Such as birth, death, and marriage certificates. Medical records of the child and school attendance records of the child.

Photographs of the child in abuse and neglect cases should be preserved with notations as to when and where photo was taken, by whom, the time of day, and what the photo depicts.

(3) Hearsay Testimony.
Hearsay testimony is defined as "testimony in court, or written evidence, of a statement made out of court, the statement being offered as an assertion to show the truth of the matters asserted therein, and thus resting for its value upon the credibility of the out-of-court assertion." McCormick, Evidence, 2nd ed. (West Publishing Co., 1972).

The reason for this rule is that there is no opportunity to test the reliability of the statement through cross-examination of the person who made it.

Another reason for the rule is that the witness must have first-hand knowledge of the facts about which he is testifying.

The exceptions to the hearsay rule is a troublesome area for attorneys, judges and social workers.

A general rule is that the worker can testify about statements made personally to him by parents. The worker can also testify as to what he saw or participated in the activity he is testifying about.

Social workers can maximize their opportunities for gaining first-hand knowledge by personally confirming observations reported by others.

Social workers can testify as to statements made by the child as an exception to the hearsay rule. Huber v. Buder, 434 SW 2d 177 (Tex. Civ. App. 1968, ref. n.r.e.).

The basis for the exception is that the statements are not admitted as representing truth of the matter stated, but to inquire into the attitude and reactions of children, and to show the mental and emotional state of the child.

(4) Pretrial Conferences.
Pretrial conferences between the county attorney and social worker should always be held. No competent attorney ever takes a case to trial without preparation. If the worker has kept a complete, accurate file, the conference will be productive.

The conference prior to trial should involve two phases: (1) Advising the county attorney of the full facts of the case; the names of the witnesses and the testimony expected to be presented by each witness; any weaknesses in the case should be brought out and discussed; and going over reports made by physicians, psychologists or other experts expected to be used as witnesses. (2) The worker must be prepared for both direct and cross-examination.

It is essential that workers be absolutely candid with the county attorney. Any problems or disagreements between the worker and the county attorney should be resolved at the pretrial conference, not the trial.

IV. PARENT-CHILD RELATIONSHIPS.

A. RELATIONSHIPS.

1. Relation of Child to Mother.
A child is the legitimate child of the mother.

TEX. FAM. CODE ANN. Sec. 12.01.

2. Relation of Child to Father.

   a. Marriage.
   A child is legitimate as to his father, if the child was born or conceived during the marriage of his father and mother. TEX. FAM. CODE ANN. Sec. 12.02(a).

   b. Attempted Marriage.
   A child is legitimate as to his father, if the father and mother attempted to marry in apparent compliance with laws of this state, another state, or nation, although attempted marriage may be void, and child born or conceived before or during attempted marriage. TEX. FAM. CODE ANN. Sec. 12.02(b).

   A child born of a putative marriage is legitimate. Rey v. Rey, 487 SW 2d 245 (Tex. Civ. App. 1972).

   c. Paternity.
   If paternity, voluntary or unvoluntary is established, child is legitimate as to man. TEX. FAM. CODE ANN. Sec. 12.02(c).

   The father of an illegitimate child does not have an absolute right to legitimate his child. In The Interest of K, A Child, Vol. 19, No. 27, Texas Supreme Court Journal, 1976.

B. ARTIFICAL INSEMINATION.

1. Consent.
Consent of husband necessary in writing and acknowledged.

2. Effect of Consent.
The child born to wife is legitimate to both. TEX. FAM. CODE ANN. Sec. 12.03(a).

3. Donor.
The child is not the child of the donor, unless he is the husband. TEX. FAM. CODE ANN. Sec. 12.03(b).

C. RIGHTS, PRIVILEGES, DUTIES AND POWERS OF PARENT.

1. Introduction.

Today we accept the premise that the custody, care and nurture of any child rests primarily on the parent; not in the state. In our culture we believe that the child has a natural right to be reared by his parents. However, there are responsibilities attached to this parental right. These responsibilities by necessity must meet community standards. When the parent fails in that responsibility the child has the right to the protection of the state.

Child protective workers constantly face difficult situations. Probably one of the most trying arises when the worker must reconcile the sometimes conflicting rights of parent and child. This leads to several considerations. What are the rights of all children? What are the responsibilities of parents? How do preventive services guarantee that these rights and obligations will be met?

2. Parental Responsibilities.

a. Duties.

The parent of a child has the duty of care, control, protection, moral and religious training, and reasonable discipline of the child. TEX. FAM. CODE ANN. Sec. 12.04(2); the duty to support the child, including providing the child with clothing, food, shelter, medical care, and education. TEX. FAM. CODE ANN. Sec. 12.04(3); and the duty to manage the estate of the child. TEX. FAM. CODE ANN. Sec. 12.04(4).

b. Rights.

The parent of the child has the right to have physical possession of the child and to establish its legal domicile. TEX. FAM. CODE ANN. Sec. 12.04(1); the right to the services and earnings of the child. TEX. FAM. CODE Sec. 12.04(5); and the right to inherit from and through the child. TEX. FAM. CODE ANN. Sec. 12.04(9).

c. Powers.

The parent of the child has the power to consent to marriage, to enlistment in the armed forces of the United States, and to medical, psychiatric, and surgical treatment. TEX. FAM. CODE ANN. Sec. 12.04(6); the power to represent the child in legal action. TEX. FAM. CODE ANN. Sec. 12.04(7); and the power to receive and give receipt for payments for the support of the child and to hold and disburse any funds for benefit of the child. TEX. FAM. CODE ANN. Sec. 12.04(8).

d. Limitations.

All of the above duties, rights and powers are subject to judicial orders or affidavits of relinquishment of parental rights. TEX. FAM. CODE ANN. Sec. 12.04.

3. Rights of Children.

a. Children's Bill of Rights.

There have been many statements enunciating the rights and needs of children. Probably one of the best statement was made a number of years ago by the New York State Youth Commission in what is called the "Children's Bill of Rights."

"For Each Child, Regardless of Race, Color or Creed!

..The right to the affection and intelligent guidance of understanding parents.

..The right to be raised in a decent home in which he or she is adequately fed, clothed and sheltered.

..The right to the benefits of religious guidance and training.

..The right to a school program which, in addition to sound academic training, offers maximum opportunity for individual development and preparation for living.

..The right to receive constructive discipline for the proper development of good character, conduct and habits.

..The right to be secure in his or her community against all influences detrimental to proper and wholesome development.

..The right to individual selection of free and wholesome recreation.

..The right to live in a community in which adults practice the belief that the welfare of their children is of primary importance.

..The right to receive good adult example.

..The right to a job commensurate with his or her ability, training and experience, and protection against physical or moral employment hazards which adversely affect wholesome development.

..The right to early diagnosis and treatment of physical handicaps and mental and social maladjustments, at public expense whenever necessary."

These are birthrights of all children. They are the rights of our children, who will become the adults of tomorrow and into their hands cast the future of our society.

V. CONSERVATORSHIP, POSSESSION AND SUPPORT OF CHILDREN.

A. THE MANAGING CONSERVATOR.

1. Introduction.

All of us are judged and evaluated by what we say and by what we do. In the area of protective services, which is nothing more than a program which is dedicated to service on behalf of neglected and abused children, you will be judged and evaluated by what you say and do in your community.

It must be kept in mind that child protective services are involuntary and they reserve the right to use authority through the use of the courts. When it does choose to use it, it does so constructively. The authority of the court is invoked in situations where the danger to the health, welfare, morals, or emotional well-being of the child is so acute that it becomes imperative to remove the child from such extremely hazardous surroundings.

This decision once made should be made on a positive level--that is, that the action is for the best interests of the child and not to be punitive towards the parents. Also, the court should not be thought of as a "last resort" because there has been a failure on the part of the agency or worker.

It must be remembered that there will be a number of cases that will not respond to the traditional casework treatment. The protective service program should be able to resolve the problem of child neglect and child abuse in a majority of cases. It is my opinion that over 90% of these type of cases can be resolved through skilled social services by protective services. When the intervention of the courts is necessary, it must be kept in mind that the court is also dedicated to protect children, in terms of meet- their best interests. The approach to be used by protective services in seeking the intervention of the court should be on the level of cooperation. There must be developed a good working relationship with the courts so that protective services and the courts work hand in hand on behalf of children.

2. Definition.
   See: III A. GENERAL PROVISIONS 1.f.

3. Mandatory Appointm
   a. Parent.
      A parent shall [illegible]pointed managing conservator unless appointment not in best interests of child. TEX. FAM. CODE ANN. Sec. 14.01(b).

   b. Separation of Parents.
      If the court finds that the parents are or will be separated, the court shall appoint a managing conservator. TEX. FAM. CODE ANN. Sec. 14.01(a).

   c. Affidavit of Relinquishment.
      A person or agency named managing conservator in affidavit of relinquishment shall be appointed managing conservator unless not in best interests of child. TEX. FAM. CODE ANN. Sec. 14.01(c).

(1) Rights.
The person or agency designated managing conservator in affidavit shall have any right of a managing conservator expressly given in the decree awarding possession of child. TEX. FAM. CODE ANN. Sec. 14.04(4).

(2) Duties.
The person or agency designated managing conservator in affidavit shall have duty of care, control, protecting and reasonable discipline of child. TEX. FAM. CODE ANN. Sec. 14.04(1); and the duty to provide the child with clothing, food, and shelter. TEX. FAM. CODE ANN. Sec. 14.04(2).

(3) Powers.
The person or agency designated managing conservator in affidavit shall have power to consent to medical and surgical treatment during an emergency involving an immediate danger to the health and safety of the child. TEX. FAM. CODE ANN. Sec. 14.04(3).

All of the above rights, duties and powers are those of a possessory conservator, and remain so, until such time as they are modified or terminated by court order. TEX. FAM. CODE ANN. Sec. 14.02(c).

4. Discretionary Appointment.
   a. Parent.
   In any suit affecting the parent-child relationship, the court may appoint a parent managing conservator. TEX. FAM. CODE ANN. Sec. 14.01(b).
      (1) Sex.
      In determining which parent to appoint as managing conservator, the court shall consider the qualifications of the parents without regard to sex. TEX. FAM. CODE ANN. Sec. 14.01(b).

      Both parents are now on an equal plane

in custody matters, thus removing the preference established for the mother in many cases involving custody of young children. Adams v. Adams, 519 SW 2d 502 (Tex. Civ. App. no writ, 1975).

(2) Rights, Duties and Powers
A parent appointed managing conservator retains all rights, privileges, duties, and powers of a parent to the exclusion of the other parent, subject to rights, privileges, duties, and powers of a possessory conservator and any limitation on access to child imposed by a court. TEX. FAM. CODE ANN. Sec. 14.02(a).

The appointment of a parent as managing conservator does not create, rescind, or otherwise alter right to inherit as established by law. TEX. FAM. CODE ANN. Sec. 14.02(d).

5. Discretionary Appointment.

a. Non-Parent.
In any suit affecting the parent-child relationship the court may appoint a suitable competent adult or an authorized agency managing conservator. TEX. FAM. CODE ANN. Sec. 14.01(a).

(1) Rights.
A non-parent appointed managing conservator has the right to have physical possession of child and right to establish its legal domicile. TEX. FAM. CODE ANN. Sec. 14.02(b)(1); and the right to the earnings and services of the child. TEX. FAM. CODE ANN. Sec. 14.02(b)(4).

(2) Duties.
A non-parent appointed managing conservator has the duty of care, control, protection, moral and religious training, and reasonable discipline of child. TEX. FAM. CODE ANN. Sec. 14.02(b)(2); and the duty to provide the child with clothing, food, shelter, and education.

TEX. FAM. CODE ANN. Sec. 14.02(b)(3).

(3) Powers.
A non-parent appointed managing conservator has the power to consent to marriage, enlistment in the armed forces, and to medical, psychiatric, and surgical treatment. TEX. FAM. CODE ANN. Sec. 14.02(b)(5); the power of legal representation. TEX. FAM. CODE ANN. Sec. 14.02(b)(6); the power to receive and disburse funds for benefit of child. TEX. FAM. CODE ANN. Sec. 14.02(b)(7); and power to consent to adoption if rights of parents have been terminated or child has no living parent. TEX. FAM. CODE ANN. Sec. 14.02(b)(8).

(4) Report.
A non-parent appointed managing conservator shall file each 12 months a report of facts concerning the child's welfare, including his whereabouts and physical condition. TEX. FAM. CODE ANN. Sec. 14.01(d).

The effect of requiring a report every 12 months is to establish a court monitoring system of children in placement.

When judges and social workers remove children from their parents, they believe they are acting "in the best interests of the child." The sad truth is that in a number of cases (which the author would hope are in the minority) the state becomes an indifferent and neglectful mother. It shuttles children from foster home to foster home, shattering whatever affectionate attachments they may form. Or stores them in child-care institutions and forgets them. The fact is, that in some communities neglected and abused children are simply forgotten and remain in "legal limbo." How are they forgotten? They are lost or forgotten in the files -- "system amnesia" critics call it. Sec. 14.01(d) attempts to solve this problem simply by requiring yearly reporting by the non-parent managing conservator. If child protective agencies and the courts are to work cooperatively in the best interests of children, methods by which a court can monitor children in placement must be developed on a statewide system or local system. The State of South Carolina has created a system of Children's Foster Care Review Boards including a statewide advisory board and local board in each of their judicial districts. These local boards review cases of foster children every six months; encourage return of children to their parents; if not feasible, encourage permanent plans, including adoptions, not excluding foster parents.

Increased monitoring of cases by the judiciary is an important aid in the effective delivery of services to children. The suggestion to increase court monitoring of cases is made with the knowledge that it is not a panacea. The price of failing to establish a court-monitoring system is to continue not giving children the continuity, permanence, and quality of services they deserve.

B. THE POSSESSORY CONSERVATOR.

1. Introduction.

The appointment of a possessory conservator in child protective services should not be overlooked. This is simply so, because if a child has been neglected or abused or if there is potential for such behavior and the court has intervened this procedure has great potential as a tool if the goal of preservation of the family is to be reached. The main reason for this is that the court has broad powers in prescribing the rights, privileges, duties, and powers of the possessory conservator, and the child. The child protective agency in asking that neglecting or abusing parents be appointed possessory conservators, can request the court to make it quite clear that the parent's conduct cannot be considered unless and until this conduct is modified.

This "tool" can be effectively used by the social workers in those difficult cases to establish a working relationship with these families. The relationship that must be developed between social worker and family -- is to provide them with an alternative -- to look to the social worker as a source of help.

Temporary foster care can be used as a means of providing relief, particularly in time of crisis, and can be an "enabling" process for the parents as well as a safety factor for the children.

Possessory conservatorship may be used in those cases where children have severe medical or emotional problems or for one reason or another cannot be placed for adoption, while retaining the agency as managing conservator for various reasons, among them financial assistance. The child will thus receive that continuity and permanency they deserve.

2. Definition.
   See: III A. GENERAL PROVISIONS 1.g.

3. Appointment.
   a. Discretionary.
      The court may appoint one or more possessory conservators if a managing conservator is appointed, and set time and conditions for possession or access to child. TEX. FAM. CODE ANN. Sec. 14.03(a).

   b. Denial of Access To Parents.
      Parents may not be denied possession or access to a child unless the court finds that possession or access not in best interest of child or that possession would endanger the physical or emotional welfare of the

child. TEX. FAM. CODE ANN. Sec. 14.03(c).

c. Rights, Privileges, Duties, and Powers.
On appointment the court shall prescribe the rights, privileges, duties, and powers of the possessory conservator. TEX. FAM. CODE ANN. Sec. 14.03(b). See: V A. THE MANAGING CONSERVATOR 3. c. (1), (2), and (3).

d. Rights of Grandparents.
The court may grant reasonable access rights to either the maternal or paternal grandparents. TEX. FAM. CODE ANN. Sec. 14.03(d).

In Deweese v. Crawford, 520 SW 2d 522 (Tex. Civ. App. 1975) parents of deceased son brought action seeking visitation rights with grandchildren who had been adopted by natural mother's second husband. The Court held that individuals whose son fathered children and subsequently adopted were not "paternal grandparents" within meaning of statute authorizing the granting of visitation rights to grandparents and thus were not entitled to visitation rights.

The adoption in this case occurred prior to the enactment of Title 2, so the question remains whether the same rule would be applied in an adoption under the provisions of Sections 15.07, 16.03 and 16.09 of the Family Code as presently in effect.

4. Support of Child.

a. Payment.
The court may order either or both parents to make periodic payments or a lump-sum payment, or both, for support of child until he is 18 years of age. TEX. FAM. CODE ANN. Sec. 14.05(a).

b. Property.
In addition, the court may order a parent obligated to support a child to set aside property for the support of the child. TEX. FAM. CODE ANN. Sec. 14.05(a).

c. Mental or Physical Disability.
If the court finds child requires continuous care and personal supervision because of a disability and is unable to support himself, payments for support of the child shall be continued after 18th birthday. TEX. FAM. CODE ANN. Sec. 14.05(b).

d. Trusts.
If a parent is beneficiary of a trust and is obligated to support the child, trustee may be required to make disbursements for support of the child. If payments to beneficiary are discretionary, court may order payments for child from income only. TEX. FAM. CODE ANN. Sec. 14.05(c).

e. Termination of Duty To Support.
Provisions for support terminate on marriage of child, removal of disabilities for general purposes, or death of obligor, unless otherwise agreed to in writing or expressly provided in decree. TEX. FAM. CODE ANN. Sec. 14.06(d).

5. Agreements Concerning Conservatorship.
Parties may enter into written agreements containing provisions for conservatorship and support. TEX. FAM. CODE ANN. Sec. 14.06(a).

The court must approve the agreement. TEX. FAM. CODE ANN. Sec. 14.06(b).

If the court determines that agreement is in child's best interest, the terms shall be set forth in decree. TEX. FAM. CODE ANN. Sec. 14.06(c).

Terms of the agreement set forth in the decree may be enforced as a judgment or contempt, but are not enforceable as contact terms unless the agreement so provides. TEX. FAM. CODE ANN. Sec. 14.06(d).

6. Best Interests of Child.
a. Introduction.
The term "best interest" as used in the Family Code does not identify specific factors a court should consider in determining the

child's best interest. Neither does the Family Code impose any limitations on the court as to what factors should not be considered.

Texas law has been consistent in stating that the question of whether a trial court has abused its discretion is one of law requiring an appraisal of the facts. "The trial court must look, in the light of all the circumstances, to the best interests of the child. With the opportunity to observe the appearance and demeanor of the witnesses, to weigh their testimony, and evaluate the virtues of parties, no one is in a position to do this better than the trial court." Valentine v. Valentine, 203 SW 2d 693, 696 (Tex. Civ. App. 1947). Then, the limitation is "abuse of discretion."

Obviously, the term "best interest" can take different meanings. The term then becomes a process by which a value judgment is made by the judiciary and child protective worker.

In determining what factors should be considered the court as well as the child protective worker should look to the child's physical well-being, intellectual development, material comforts, and emotional stability. Also to be considered is the impact of a change in placement, that is, from the home to a foster home. The factor that is most troublesome and frustrating is to determine the "best interests" either on a "short" or "long" term basis.

The following line of cases will illustrate the test used in reaching the ultimate issue of what is in the "best interests" of the child.

Taylor v. Meek, 276 SW 2d 287 (Sup. Ct. Tex., 1955) said, "Because a change of custody disrupts the child's living arrangement and the channels of a child's affection, a change should be ordered only when the trial court is convinced that the change is to be a positive improvement for the child."

Mumma v. Aguirre, 364 SW 2d 220 (Sup. Ct. Tex., 1963) in addressing themselves to the factors to be considered stated: "There are rules, however, by which our courts seek, to some extent, to measure the best interests of young children in making awards of custody. There is a presumption that the interests of a young child are best served by award of its custody to its natural parents. The presumption is based upon a logical belief that the ties of the natural relationship of a parent and child ordinarily furnish strong assurance of genuine efforts on the part of the custodians to provide the child with the *best care and opportunities possible*, and, as well, the best atmosphere for the *mental, moral and emotional development of the child*."

The Supreme Court in *Herrera v. Herrera*, 409 SW 2d 395 (Sup. Ct. Tex. 1966) held that where mother permitted her eight-year-old son to remain in custodyof paternal grandparents since he was two or three months old, permitted the boy to form family relationships and ties with his paternal grandparents, permitted him to grow up without contact with his two sisters while at same time establishing family ties with his three cousins who lived next door to him, and during this entire period neither contributed to her son's support nor visited him, it was in best interests of child to terminate mother's rights.

In *Richardson v. Althoff*, 415 SW 2d 520 (Tex. Civ. App. 1967), father brought action seeking custody of eleven-year-old daughter who had, for more than one year been in care and custody of maternal aunt and uncle. Mother was permanently committed to mental institution. Court held that best interest of child is above right of parent to have custody.

The Court in *De la Hoya v. Saldivar*, 513 SW 2d 259 (Tex. Civ. App. 1974) held that the trial court did not abuse its discretion in granting custody to their aunt who had cared for three children for some six years since their mother's death, after finding that natural father was a fit and proper person to have such custody and that he had not voluntarily relinquished the care, custody and control of the children where the Court considered fact that a mother relationship with aunt existed for practically all of the early development years.

This standard is not without its critics. Goldstein, Freud and Solnit, Beyond The Best Interests Of The Child, The Free Press, 1973, would substitute for the best interests of the child standard a new formula: the least detrimental alternative. They urge that the law should protect and nurture all psychological parent-wanted child relationships, however they develop, by recognizing that children need continuity of relationships, surroundings, and enviornmental influences for normal development; and that a child's sense of time is different from an adult's. The authors call these recommendations their "continuity" and "child's-sense-of-time" guidelines.

The least "detrimental alternative, then, is that specific placement and procedure for placement which maximizes, in accord with the child's sense of time and on the basis of short-term predictions given the limitations of knowledge, his or her opportunity for being wanted and for maintaining on a continuous basis a relationship with at least one adult who is or will become his psychological parent." (p. 53)

Michael S. Wald, State Intervention on Behalf of "Neglected" Children: Stanford Law Review, Vol. 28, No. 4, 1976, proposes a new test: Can the child be protected from the specific harm? He points out that instead of trying to decide whether removal will promote the child's best interest, the court should determine only whether the child can be protected from the specific harm(s) justifying intervention if left in the home. If so, removal should not be permissible. For example, if the child has been physically injured by the parents, the court would determine whether services short of removal -- casework services, use of a homemaker or visiting nurse, mandatory day care -- are adequate to ensure that the child will not be injured again.

b. Primary Consideration.
The best interest of the child shall always be the primary consideration of court in determining questions of managing conservatorship, possession, and support of and access to the child. TEX. FAM. CODE ANN. Sec. 14.07(a).

c. Child's Preference.
If child is 14 years of age or older, he may, by writing filed with the court, choose the managing conservator, subject to approval of the court. TEX. FAM. CODE ANN. Sec. 14.07(a).

d. Factors Determining Best Interests.
The court shall consider the circumstances of the parents in determining best interests. TEX. FAM. CODE ANN. Sec. 14.07(b).

e. Interview With Child.
In nonjury cases the court may interview child. Court may permit counsel to be present. Upon request or on court's own motion, record of interview shall be made. TEX. FAM. CODE ANN. Sec. 14.07(c).

C. MODIFICATION OF ORDER.

1. Filing The Motion.

a. Scope of Motion.
A court order or the portion of a decree that provides for the support of a child or the appointment of a conservator or sets terms and conditions of conservatorship for support, visitation, may be modified. TEX. FAM. CODE ANN. Sec. 14.08(a).

A trial court cannot modify or reform previous orders absent pleadings and proof. Martin v. Martin, 523 SW 2d 252 (Tex. Civ. App. 1975).

b. *Parties.*
Any party affected by the order or portion of the decree may file motion. TEX. FAM. CODE ANN. Sec. 14.08(a).

c. *Court.*
The motion must be filed in court having jurisdiction of suit affecting parent-child relationship. TEX. FAM. CODE ANN. Sec. 14.08(a).

This is an exception to Sec. 11.07(b) where a request for further action is initiated by filing a petition.

d. *Notice.*
Each party who may be affected by motion is entitled to at least 30 days' notice of hearing. TEX. FAM. CODE ANN. Sec. 14.08(b).

2. *Modification.*

a. *Designation of Managing Conservator.*
After a hearing, the court may modify designation of managing conservator if:

(1) *Circumstances of Child.*
The circumstances of the *child* have so materially and substantially changed since the entry of order or decree to be modified that *retention* of present managing conservator would be injurious to welfare of child and *appointment* of new managing conservator would be a *positive improvement* for child; or

(2) *Circumstances of Parent.*
The circumstances of the *parent* have so materially and substantially changed since the entry of order or decree to be modified that *retention* of present managing conservator would be injurious to welfare and *appointment* of new managing conservator would be a *positive improvement* for child. TEX. FAM. CODE ANN. Sec. 14.08 (c)(1).

b. *Support, Access To Or Possession Of Child Or Rights of Conservators.*

After hearing, the court may modify provisions of support, visitation, or relative rights of conservators, if:

(1) Circumstances of Child.
The circumstances of the child have materially or substantially changed since entry of order or decree; or

(2) Circumstances of Person.
The circumstances of the person affected by the order or decree have materially and substantially changed.

Support obligations may be modified only as to obligations accruing subsequent to motion to modify. TEX. FAM. CODE ANN. Sec. 14.08(c)(2).

3. Motion Filed Within One Year of Date of Issuance of Order.
   a. Affidavit.
      If a motion is filed within one year after issuance of order sought to be modified, for purpose of changing designation of managing conservator an affidavit must be attached to motion alleging facts that:

      (1) Child's Welfare.
      Child's present environment endangers his physical health or impairs his emotional development; or

      (2) Managing Conservator.
      The managing conservator is seeking or consenting to modification, and modification in best interests of child. TEX. FAM. CODE ANN. Sec. 14.08(d)(1) and (2).

   b. Denial of Motion.
      The court may deny the motion and refuse hearing unless court is convinced child is endangered, physically or emotionally. TEX. FAM. CODE ANN. Sec. 14.08(e).

4. Enforcement of Order.
   a. Contempt.
      Any order of the court may be enforced by

contempt. TEX. FAM. CODE ANN. Sec. 14.09(a).

(1) Penalties.
The court may punish by a fine of not more than $500, or confinement for not more than six months, or both, any person guilty of contempt of the court. Art. 1911 a.(2)(a) V.A.T.S.

b. Enforcement.
(1) Rule 308-A.
In child support cases when the court is advised that order has been disobeyed, the court may appoint a member of the bar to represent claimant. If motion for contempt is filed, court shall assess attorney's fees as costs against defaulting party. Tex. R. Civ. P. 308-A.

(2) Motion.
On motion by party entitled to receive payments, after 10 days' notice court may render judgment against defaulting party for unpaid amounts and enforce judgment by any means available for enforcement of judgments for debts. TEX. FAM. CODE ANN. Sec. 14.09(c).

c. Testimony of Parent.
A parent may be compelled to testify fully in regard to his ability to support the child. TEX. FAM. CODE ANN. Sec. 14.09(d).

D. HABEAS CORPUS.

1. Possession Governed by Court Order.
a. Right of Possession.
If the right of possession is governed by a court order, the court shall compel return of the child to person entitled to possession by virtue of court order. TEX. FAM. CODE ANN. Sec. 14.10(a).

The recent case of Standley v. Stewart, Judge, Texas Supreme Court Journal (Vol. 19, No. 40, July, 1976.) which was in the nature of Original Mandamus Proceeding held that this section is mandatory by stating: "The use of habeas corpus as a vehicle for redetermination of the right to possession was precisely what the Legislature intended to change. The Legislature intended to demand obedience to existing court orders and to compel that obedience by habeas corpus proceedings."

In this case divorce was granted in 1969 and custody of parties' son was placed in mother's custody. In 1976 son voluntarily moved to father's house; father filed a petition to modify custody; mother filed an application for writ of habeas corpus to obtain return of son. Trial court refused to grant writ. Supreme Court set aside trial court's order.

b. Cross-Action Or Motion Pending Modification.
The court shall disregard any cross-action or motion pending modification determining managing conservatorship, possession, or support of or access to child. TEX. FAM. CODE ANN. Sec. 14.10(b).

(1) Exceptions.

(a) No jurisdiction.
The previous order was granted by a court of another state or nation and court did not have jurisdiction of the parties. TEX. FAM. CODE ANN. Sec. 14.10(b)(1).

(b) 12 month residence.
The child has been within the state for at least 12 months immediately preceding the filing of the petition for the writ. TEX. FAM. CODE ANN. Sec. 14.10(b)(2).

c. Temporary Order.
The court may issue temporary orders if there is a serious immediate question concerning the welfare of the child. TEX. FAM. CODE ANN. Sec. 14.10(c).

d. Amendable to Civil Process.
While in this state, relator is not amendable

to civil process and not subject to jurisdiction of any civil court except in court in which writ is pending and only for purpose of prosecuting the writ. TEX. FAM. CODE ANN. Sec. 14.10(d).

2. Possession Not Governed by Court Order.
   a. Right of Possession.
      If right of possession of a child is not governed by a court order, the court shall compel the return of the child to relator, if, and only if, it finds relator has a superior right to the child by virtue of the rights, privileges, duties, and powers of a parent as set forth in Sec. 12.04. TEX. FAM. CODE ANN. Sec. 14.10(e).

   b. Motion For Temporary or Permanent Adjudication.
      The court shall disregard any motion for temporary or permanent adjudication relating to possession, unless at time of hearing an action is pending, in which event court may issue temporary orders. TEX. FAM. CODE ANN. Sec. 14.10(f).

VI. SUMMARY.

It was George Santayana who said, "Those who cannot remember the past are condemned to repeat it."

There are things in the past that should not be repeated, yet there is so much that has been learned of the past that should be remembered.

It is my belief that Title 2 is the sum total of what has been learned of the past. Yes, there is room for improvement -- there always will be!

The major thrust of Title 2 is based on the premise that the future development of child protective services should be a comprehensive, coordinated process aimed at prevention of child neglect and abuse. Can we prevent child neglect and child abuse? Are we prepared, are we equipped to prevent the first onset of child neglect and child abuse? The answer is in the affirmative. In A Plan for Child And Youth Care In Texas, prepared by The Interagency Task Force On Youth Care And Rehabilitation, 1974, it was recommended that the broad awareness program and reporting system for suspected child abuse and for child abuse prevention, developed by the State Department of Public Welfare be implemented -- which recommendation has been carried out. But I submit that this is not enough. Here is where the total community has a role to play. Here is where the total community, in terms of all the disciplines represented by our behavioral sciences, has a role to play. What is required? The building of stable families; families which do not suffer breakdown. This may be a dream -- to find the perfect family -- where all problems are properly handled and where all children within that setting will receive the attention and care that they deserve, and that they must have.

It should be quite obvious that our society will not solve the problems of neglect or abuse by waiting to treat people after they have maltreated their children. Preventive approaches must be found and developed. Where do we start? The most fruitful place to start prevention is in the family. We need to find ways of modifying and improving the parent-child relationship. This, I believe is a critical requirement for preventing neglect or abuse.

The law, unfortunately does not provide the essential services for families. It is only through community resources, that a comprehensive child protective service system can be developed. The law then, will give that system specific powers and authority.

If prevention fails, Title 2 then supports the positive commitment to establish legal rights for children and parents, and to secure due process for them in the courts. The use of the law -- conservatorship -- as a fundamental tool to aid in the preservation of family life can then be utilized. But, before resorting to such drastic action, a word of caution: the use of this tool -- conservatorship, will require changes in the attitudes and ingrained habits of those individuals involved in the system -- child protective agencies, workers, attorneys and judges. It should be recognized and never forgotten that when the process of state intervention is required, we are doing it to minimize harm to the child. This intervention process should not unnecessarily harm either the parents or the child. This process should be done and accomplished with compassion and justice. There is no aspect of child care that can yield more rewarding results than the proper understanding and approach to the care of the abused and neglected child and his parents through state intervention.

The late French author, Albert Camus, summed up the problem of the maltreated children when he said, "We cannot prevent this world from being a world in which children are tortured, but we can reduce the number of tortured children. If we do not do this, who will do it?"

In those cases where the process of state intervention is used and the courts do take jurisdiction, the objective of child protective services should be to return the child to the family if it can be done safely. This will of course involve a treatment plan. The goal of the courts has been to deliver individualized justice through the care, guidance and treatment of children in ways most appropriate to meet individual needs. This goal is dependent on adequate staffing, services, resources and facilities for children. How then, will these goals be accomplished? The ideal system would be for child protective agencies, both public and private, to have available and offer the courts the services, resources and facilities for those children who become the state's responsibility. On the other hand, if state intervention is sought and the state assumes the parental role, and does not offer the courts these services, then the courts must exercise their authority in requiring the legislative and executive branches of the government to assume the independence of the judiciary by providing it with the funding and services needed to fulfill the responsibilities mandated by the laws of the state government. In Kent v. U.S., 383 U.S. 541 at 555 (1966) Mr. Justice Fortas said: "There may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections afforded to adults nor the solicitous care and regenerative treatment postulated for children."

A major function, then, of the child protective movement is to press for increasing recognition of the needs followed by adequate services under public and private auspices. All child protective agencies must be responsible for experimentation and demonstration of new techniques for helping children who are disadvantaged. This is not a simple task. I do not believe that we will see these agencies developed to the point where there is nothing for the imaginative, creative and vigilant agencies to do.

Finally, we know that the only real and permanent solution to the problems of neglect and abuse is to alleviate the many social problems in our communities which afflict the offenders and bring suffering to those being mistreated. It is not enough for agencies to limit their services to the examination, evaluation and treatment of specific instances of neglect or abuse. We must begin to devise ways of improving family life in our communities. Anything that works for mutual accomodation, for a resort to law and justice, for structure and stability in the parent-child relationship, for open communications, for access to avenues of constructive change will decrease neglect and abuse in our families. We must not become apathetic and indifferent -- we must become enthusiastic, which enthusiasm can be aroused by two things: first, an ideal which takes the imagination by storm; and second, a definite, intelligible plan for carrying that ideal into practice. The needs of children demand our highest ideals and our most enthusiastic planning and action.

LEGITIMATION, ADOPTION AND TERMINATION OF PARENTAL RIGHTS

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LEGITIMATION, ADOPTION, AND TERMINATION OF PARENTAL RIGHTS

Donald R. Royall

I. INTRODUCTION AND SCOPE OF ARTICLE

Much of what follows is an analysis of the Texas Legislature's statutory response to numerous United States Supreme Court decisions of recent years, recognizing that due process and equal protection mandate equal treatment for an illegitimate child in almost all aspects of his life in relation to his father and mother, and they to him. The writer regrets the paucity of Texas case law construing these statutes, but about the time that the questions prompted by the 1974 version of the code reached the appellate courts in due course, the code itself underwent extensive revision. Hence, what follows presents as many questions for answer, as answers to questions.

II. FUNDAMENTAL CONSTITUTIONAL PRINCIPLES RELATING TO THE FATHERS OF ILLEGITIMATE CHILDREN.

For years in Texas, there existed a dual standard dealing with adoptions and terminations of parental rights, depending on whether or not the child was the legitimate or illegitimate child of its father. If the child was legitimate as to its father, the parent-child relationship could be terminated only through an adoption proceeding to which the father was a party, or, arguably, through a dependency and neglect proceeding, again where the father was a party to the suit. This was not true in the case of the illegitimate child. Although many careful lawyers sought to bring the father into the suit, or at least provide him with notice, the statutes of Texas made no such requirement. Thus the vast majority of adoptions occurred with the consent of the mother, and with no attempt to involve the "illegitimate father" in any way. It was, therefore, presumed that no correlative rights and duties flowed back and forth between father and child.

In the years immediately prior to the enactment of the Family Code on January 1, 1974, the Supreme Court of the United States considered this dual standard, and made it clear that such treatment was violative of due process and equal protection. It was in light of these decisions that the Family Code provisions, as they relate to the fathers of illegitimate children, were ultimately fashioned in what appeared at the time to be a revolutionary, burdensome, and unrealistic manner. An analysis of the fundamental holdings of these cases will be helpful to a basic understanding of how the Family Code approaches these problems, and why it took the approach that it has.

A. Once the identity of the father of an illegitimate child is established, the fact of illegitimacy is no basis for distinctions within the law concerning his rights in and to a child. Stanley v. Illinois, 405 U.S. 645 (1972); Rothstein v. Lutheran Social Services of Wisconsin & Upper Michigan, 405 U.S. 645 (1972).

B. Once the identity of the father of an illegitimate child is established, the fact of illegitimacy is no basis for distinction within the law concerning the child's rights vis a vis its father. Gomez v. Perez, 409 U.S. 535 (1973).

C. An individual's rights may not be judicially modified in a proceeding unless reasonable steps are taken to afford him notice of the proceeding, in advance so as to allow the opportunity for him to appear and protect the rights. Armstrong v. Manzo, 380 U.S. 545 (1965).

III. LEGITIMATION-VOLUNTARY AND INVOLUNTARY

A. The Family Code summarizes and embodies Texas case law with respect to the status of illegitimate children.

1. Such a child has always been legitimate with respect to its mother. Tex. Family Code Ann. §12.01 [1973]

2. F.C. §12.02(a) legitimates a child if the child is born or conceived before or during the marriage of his father and mother.

3. F.C. §12.02(b) [1973] legitimates the issue of void or voidable marriages.

B. Federal decisions have made it clear that once you identify the father of an illegitimate child, due process and equal protection mandate that the child has the same status under the law as a legitimate child. Gomez v. Perez, supra.

C. The "Voluntary Legitimation" Statute

1. This is a misnomer. An examination of F.C.

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§13.24 [1975], taken with F.C. §13.21(a)[1975] reveals that this can be used for involuntary proceedings.

2. What Must Be Proved? Court must find:

   a. Parent-child relationship between child and its mother has not been terminated by a decree of the court. F.C. §13.21(b)(1) [1975]. This is probably unconstitutional on its face if not in its heart.

   b. Court must find Statement of Paternity executed as provided in this chapter, and the facts stated therein are true. F.C. §13.21(b)(2)[1975]. This could be a contested paternity suit, with either the mother or the father seeking to deny his paternity. Blood tests would be relevant, but the pretrial procedures of F.C. §13.01 [1975] et seq. would not apply.

   c. Mother or managing conservator must consent to the decree. F.C. §13.21(b)(3)[1975]. How can this be?

   d. F.C. §13.21(c)[1975] tries to remedy the problems of F.C. §13.21(b)(3)[1975] but it won't stretch. Placing the burden on the court to consent upon an affirmative finding of "best interests" will not solve the problems presented by Atchley v. Nueces County Child Welfare Unit, No. B-5242, 520 S.W.2d 424 in the court below.

3. The Statement of Paternity and Its Effect.

   a. Executed as an affidavit, and witnessed by two credible adults. F.C. §13.22 [1975]. Atchley, supra.

   b. Is prima facia evidence of paternity. F.C. §13.23(a)[1975].

   c. If father's whereabouts unknown or he is outside the jurisdiction, the statement of paternity, in absence of controverting evidence, is sufficient for court to enter its decree. WOW!

D. The "Involuntary Legitimation" Statute. F.C. §13.01 et. seq. [1975].

1. This is also a misnomer, as this proceeding may be a voluntary proceeding instituted by the father. F.C. §11.09(a)[1975], F.C. §13.02(b)[1975] and F.C. §11.03[1973].

2. Venue is basically with the respondent unless long arm statute needed. F.C. §13.41[1975].

3. Suit must be brought within one year of birth of child. F.C. §13.01[1975]. See §III E infra on where the child fits into this provision.

4. Pretrial proceedings.

    a. Blood Tests. Court shall order father mother and child to submit to tests. F.C. §13.02(a)[1975].

    b. Enforcement of refusal to take test is punishable by contempt except:

        (1) If petitioner refuses, case dismissed with prejudice. F.C. §13.02(b)[1975].

        (2) If respondent refuses, fact of refusal may be introduced in evidence as provided in F.C. §13.06(d)[1975], which only admits evidence for purpose of showing nonexclusion. F.C. §13.02(b)[1975].

    c. Experts. F.C. §13.03[1975].

        (1) Appointment of experts, fees and arrangements for tests prescribed by the court. F.C. §13.03(a) and (b)[1975].

        (2) Party may hire own expert. F.C. §13.03(c)[1975].

    d. Pretrial conference. F.C. §13.04[1975]. The pretrial conference is a three party proceeding with the court as an active participant. F.C. §13.04(a)(b) and (c)[1975].

    e. If the affect of the blood tests is clear and convincing evidence of exclusion, case dismissed with prejudice. F.C. §13.05(a) [1975]. If it fails to exclude, case is set for trial. F.C. §13.05(b)[1975].

5. Evidence at trial. F.C. §13.06[1975].

    a. No new experts. F.C. §13.06(a)[1975].

    b. If blood tests show possibility of paternity, test is admissible. F.C. §13.06(c).

    c. Evidence of refusal to take test admissible only to show nonexclusion. F.C. §13.06(d) [1975].

6. Settlement. F.C. §13.07[1975]. The child must be a party to any settlement, and will be represented by guardian ad litem. Court must approve settlement. Contrast this with F.C. §13.02(b) [1975].

7. The decree shall either designate alleged father as the father, or find that he is not, and if it so designates, the parent-child relationship is established. F.C. §13.08(a) and (b); F.C. §13.09[1975].

8. Conservatorship, support, fees and payments.

    a. F.C. §13.42(a)[1975] provides that the court may provide for conservatorship, support, and access to the child; except no alleged father denying paternity may be required to make any payment for support until paternity is established.

    b. F.C. §13.42(b) and (c)[1975] provide for attorneys' fees and their collection.

E. IS ANY OF THIS BINDING ON THE CHILD?

?

See: Res Judicata In Paternity Suite, 37 Colorado Law Review 479.

1. If child must be a party, how do we make him one? In Matter of M.W., 523 S.W.2d 513. Rogers v. Searles, No. 1052, 13th T.C.A., Corpus Christi, 1/30/76.

2. Are we seeing ghosts?

IV. CHILD PLACING

A. Article 695(c) V.A.T.S. was amended to proscribe several acts, effective 9/1/75.

1. Retention of attorneys. Article 695(c) §8(a)2(e)(1) provides that no person engaged in child placing activity may make the availability of services or the amount of fee for services (other than legal services) contingent upon the retention of a particular attorney or an attorney from a particular group of attorneys.

2. Child placing without a license. Article 695(c) §8(a)12 provides that any person...who without a license...places children for adoption...is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than $1000 or confinement in county jail for not more than one year, or both. Each day of violation is a separate offense.

3. Baby selling. Article 695(c) §8(a)13a-d provides:

    a. No person who possesses a child or who has custody, conservatorship, or guardianship of a child whether or not in actual possession of the child, may offer or agree to accept or accept anything of value for the delivery of the child to another or for possession of the child by another for the purpose of adoption.

    b. No person may offer or agree to give or give anything of value to another for acquiring or maintaining the possession of a child for the purpose of adoption.

    c. This section does not apply to the payment of a fee to a child-placing agency when authorized under Subsection 2(e) of this section, to fees of an attorney or physician for actual services rendered in the usual course of a legal or medical practice, nor to the reimbursement of actual medical or legal expenses incurred by any person for the benefit of the child.

d. A person who violates this subsection is guilty of a Class B misdemeanor unless the person has been convicted previously of violating this subsection, in which case, the subsequent violation is a felony of the third degree."

4. All of the above seems to have been repealed! (?) "Section 8(a) of zhis article is repealed by Acts 1975, 64th Legislature, p. 2250, ch. 708 §26, effective 1/1/76. See now Article 695a-3."

B. Article 695a-3, V.A.T.S. is the new licensing statute, and while it proscribes child placing, 695a-3 §2(14), 695a-3 §4(a) and 695a-3 §22, 23, and 24, it does not speak to retention of attorneys, or "baby selling."

V. TERMINATION OF PARENTAL RIGHTS.

Although there can be instances where termination of parental rights might be sought where not a prelude to adoption, such instances are rare. For the purposes of this presentation, it will be assumed that the termination proceeding is for the purpose of facilitating an adoption.

A. Nature of the Suit.

1. Important Principles to Remember.

a. A termination proceeding is a suit affecting the parent-child relationship and is governed by the provisions of Chapter 11, defined F.C. §11.01(5)[1973].

b. A termination proceeding relates only to termination of the rights of a parent as that term is defined in F.C. §11.01(3) [1973] F.C. §15.01-15.07[1973].

c. The term "parent" as defined, does not include the father of an illegitimate child, unless the father has legitimated the child under Chapter 13 of the Code. A child is always legitimate as to its mother. F.C. §12.01 and 12.02[1973].

2. Jurisdiction.

   a. Suit must be filed in the court of continuing jurisdiction if there is one. F.C. §11.05[1973].

   b. Certificate from D.P.W. not necessary where suit alleges no other court has continuing jurisdiction, or this court has continuing jurisdiction by virtue of a prior proceeding, and such issue is not disputed by the pleadings. However, "jurisdiction is jurisdictional" so you should probably still get the certificate. F.C. §11.071(a)[1975].

   c. If the D.P.W. mistakenly informs a court that no other court has continuing jurisdiction, it confers jurisdiction on that court. F.C. §11.05(c)[1975].

   d. A decree of adoption, a D.P.W. mistake, or in a suit to determine paternity, a dismissal with prejudice, or a final verdict at trial, or an order denying voluntary legitimation, results in an end to the court's continuing jurisdiction unless the child was already a subject of a suit affecting the parent-child relationship in that court. F.C. §11.05(d)(1) and (2)[1975].

   e. If there has been no court action with respect to the child since 1/1/74, no court has continuing jurisdiction.

3. Venue.

   If no court has continuing jurisdiction the venue rules of F.C. §11.04[1973] will govern selection of the forum.

   a. The general rule is the county where his parents (or parent if only one) reside, except:

      (1) If a managing conservator has been appointed by the court, or designated in an affidavit of relinquishment, or if a custodian for the child has been appointed by order of a court before 1/1/74, the child resides in the county where the managing conservator resides; F.C. §11.04(c)(1)[1975].

(2) If a guardian of the person has been appointed and a managing conservator has not been appointed, the child resides where the guardian resides; F.C. §11.04(c)(2)[1975].

(3) If the parents of the child reside in different counties and no managing conservator or guardian of the person has been appointed, the child resides in the county where the parent having care and control of the child resides; F.C. §11.04(c)(3)[1975].

(4) If the child is under the care and control of an adult other than a parent and

   (a) No managing conservator or guardian of the person has been appointed, or

   (b) The whereabouts of the managing conservator or guardian of the person is unknown, or

   (c) The person whose residence determines the residence of the child has left the child under the care and control of an adult, the child resides where the adult resides, F.C. §11.04(c)(4)[1975].

(5) If a guardian or custodian of a child has been appointed by order of a court of another state or nation, the child resides with the guardian or custodian. F.C. §11.04(c)(5)[1975].

(6) If a child is not under the care and control of an adult, the child resides where he is found. F.C. §11.05(c)(6) [1975].

b. Note that while 11.04(c)(1) equates managing conservator and precode custodian, the rest of the exceptions do not. Probably an oversight.

4. What Instruments Are Required?

a. Petition.

All suits and petitions for further remedy must be instituted by filing a petition

F.C. §11.07(a)[1975].

b. Fact situation determines what else may be filed. Typical fact situations are:

   (1) The child is legitimate as to its father and mother, and termination is voluntary under F.C. §15.01[1973].

   (2) The child is legitimate as to its father and mother, and termination is involuntary as to one or both parents, but both will file affidavit of relinquishments.

   (3) The child is illegitimate as to its father and both mother and father will sign affidavits.

   (4) The child is illegitimate as to its father and neither mother nor father will sign affidavits.

   (5) The child is illegitimate as to its father, and mother will sign affidavit of relinquishment but father will not.

c. What instruments may be needed in the previous examples.

   (1) The child is legitimate as to its father and mother and termination is voluntary under F.C. §15.01[1973]. Both parents would sign the petition, and the court can terminate on the petition alone if it finds termination is in the best interest of the child. F.C. §15.01[1973].

   (2) The child is legitimate as to its father and mother and termination is involuntary but both parents will sign affidavits. This is similar to (1) above, but more common inasmuch as the parents rarely desire to appear as petitioners and give evidence at the hearing. Here petition must allege, as grounds for termination, the execution by each parent of an unrevoked or irrevocable affidavit of relinquishment,

as well as best interests of the child. F.C. §15.02(1)(I)[1973]. You will need to file affidavits of relinquishment signed by each parent. You do not need an affidavit of status as that applies only when a child is not the legitimate child of its father. F.C. §15.04(a)[1973].

(3) The child is illegitimate as to its father, but both father and mother will sign affidavits. Here we allege F.C. §15.02(1)(I)[1973] as gounds for terminating the parental rights of the mother, but not the father. To deal with the father we allege that he has executed a waiver of interest in a child under F.C. §15.041[1975], that citation need not issue and that upon final hearing he be found not to have any interest in and to the child. If statutory grounds exist, wouldn't hurt to deny status of parent but say if such relationship could exist, grounds for termination exist, such as under F.C. §15.02 (1)(H)[1975], and ask court in alternative plea to terminate any rights that could exist under the law. In this case we need:

(a) A petition;

(b) An affidavit of relinquishment from the mother;

(c) An affidavit of status from the mother; and

(d) An affidavit of waiver of interest from the father.

(4) The child is illegitimate as to its father and the mother will not sign an affidavit of relinquishment. In this situation, you must file a suit to terminate the parental rights of the mother under one or more of the grounds set out in F.C. §15.02(1)(A) thru (K) [1975] serve the alleged father, deny he is a parent, and allege grounds for termination if you have them, along the lines in (3) above, and pray that upon final hearing he be found to have no

interest in and to the child, (by reason of his default or inability to establish paternity), and a termination of any rights he could have under the law. Both will have to be served with petition.

(5) The child is illegitimate as to its father, and the mother will sign an affidavit of relinquishment but father will not. In this case you must allege termination of the mother's rights under F.C. §15.02(1)(I)[1973], serve the alleged father, deny he is a parent, and allege grounds for termination if you have them, along the lines in (4) above, and pray that upon final hearing he be found to have no interest in and to the child (by reason of his default or inability to establish paternity), and a termination of any rights he could have under the law. This case would call for:

   (a) A petition;

   (b) An affidavit of relinquishment executed by the mother; and

   (c) An affidavit of status executed by the mother.

d. Jurisdictional Note: This entire scheme is based on notice to father. If out of state, allege grounds for long arm jurisdiction if possible under F.C. §11.051[1975]. If not, bite the bullet on jurisdiction, or punt.

e. The Statement of Paternity.

   (1) The contesting father. Contests by the father will take one of two courses. Either he vehemently denies paternity, or he seeks to establish paternity and resist termination.

      (a) Denial of paternity. This is easy to deal with. You will note that the Code does not require an affidavit of waiver of interest to include an admission of paternity. In fact, it may include a specific denial. Under these circumstances, alleged fathers will frequently execute a "customized" affidavit of waiver of interest, or having been served, execute a waiver of service, or simply default, in which case the court may simply find him to be without any interest in the child. Try to put an admission of statutory grounds in the statement of paternity if possible.

(b) Establishing paternity and resisting termination. There will be occasions when the father of an illegitimate child desires to contest termination, or legitimate and seek to raise his child. Having been served with a citation in the suit to terminate the parental rights of the mother, what course of action must be taken? The father must then proceed with a Chapter 13 suit, probably under the so called voluntary sections.

f. The affidavit of relinquishment and the contesting mother (or father).

(1) Several types of contest may be anticipated by either a mother (or father) who has executed an affidavit of relinquishment. F.C. §15.02[1973] requires a finding of grounds for termination, and a finding of best interest of the child. Under these circumstances, while executing an unrevoked or irrevocable affidavit of relinquishment dispenses with the necessity of proving grounds for termination, it is still possible for a relinquishing parent to contest on the grounds that termination is not in the best interest of the child. Therefore, one must be prepared to prove both. Under these circumstances, the irrevocability of an affidavit of relinquishment to a licensed child placing agency or D.P.W. can be an illusory thing. Remember, "grounds" is never enough. One must have both grounds and the child's best interests in order to succeed. White v. Chamberlain, 525 S.W.2d 273; Atchley, supra; D.F. v. State, 525 S.W.2d 933 (T.C.A.--Houston[1st Dist.] 1975, no writ).

(2) Writ of Habeas Corpus. Under F.C. §14.10 before amended, habeas corpus was not available to seek return of child where affidavit of relinquishment had been executed naming respondent as managing conservator. F.C. §14.10[1975] now seems to extend the right to habeas corpus to a parent, absent a court order. See *Ainsworth v. Homes of St. Mark*, 530 S.W.2d 877.

(3) Bill of Review. See *Rogers v. Searle*, No. 1052, 13th Court of Civil Appeals, Corpus Christi, January, 1976.

5. The instruments themselves.

a. The Petition - F.C. §11.08[1973].

(1) Petition may be filed before the birth of the child, after the 1st trimester of pregnancy. No hearing may be held until child is at least 5 days old. F.C. §15.021[1975].

(2) The petition must contain the information set out in F.C. §11.08(b)(1) thru (10) [1973]. This is a statutory pleading and appears to be mandatory.

(3) Where the child is not the legitimate child of the father, *do not* request the court to terminate the "parent-child relationship heretofore existing" and do not refer to him as "the male parent." This may be judicial admission of the paternity father.

(4) Where the child is not the legitimate child of its father, pray for termination of the parent-child relationship existing between the child and its mother, and for a finding that the alleged father has no interest in and to the child.

(5) The petition must allege grounds for termination under F.C. §15.02[1973] as well as the allegation that termination is in the best interests of the child under F.C. §15.02(1) and (2) [1973]. See earlier discussion.

(6) If confidentiality is desired, include a prayer that the child be divested of the right to inherit from the natural parents, F.C. §15.07[1975]. Lutheran Social Services v. Myers, 460 S.W.2d 887 (Tex.1970).

b. The Affidavit of Relinquishment. F.C. §15.03[1975].

(1) After the birth of the child, an affidavit of relinquishment must be signed by the parent, whether or not a minor, witnessed by two credible persons, and verified by any person authorized to take oaths.

(a) On questions of the minority of affiant, see Austin v. Collins, 200 S.W.2d 666 (Tex.Civ.App. 1947, writ ref'd n.r.e.)

(b) On "credible persons," see Atchley v. Nueces County Child Welfare Unit, No. B-5242, writ granted 6/11/75, opinion below at 520 S.W.2d 424.

(2) What affidavit must contain. F.C. §15.03(b)[1973].

(3) What affidavit may contain. F.C. §15.03(c)[1975].

The affidavit may contain a waiver of process in a suit to terminate or one joined with an adoption. Note F.C. §15.02(1)(K)[1975] contemplates that this affidavit may be signed before suit is filed. See earlier discussion in this outline and Rogers v. Searle, supra, re waiver of service by a minor.

(4) a. An affidavit of relinquishment which designates D.P.W. or an authorized agency as managing conservator is irrevocable. Any other affidavit of relinquishment is revocable unless it is made irrevocable for a stated period

of time not to exceed 60 days. F.C. §15.03(d)[1973]. Whether or not affidavit of relinquishment is to licensed agency it is suggested that its period of irrevocability be clearly stated to avoid claims of fraud.

b. The fact that the period of irrevocability has passed does not void the affidavit of relinquishment but only makes it revocable if termination has not occurred prior to revocation.

c. How may revocations be accomplished?

1. Colwell v. Blume, 456 S.W.2d 174 (Tex.Civ.App. 1970, writ ref'd n.r.e.).

2. Griggs v. Griggs, 374 S.W.2d 939 (Tex.Civ.App.1965, writ ref'd n.r.e.).

c. The affidavit of Status of Child. F.C. §15.04[1975].

(1) The affidavit of the status of a child is only used where the child is not legitimate child of its father. F.C. §15.04(a)[1975].

(2) The affidavit must be signed by the mother whether or not a minor after the birth of the child, witnessed by two credible persons, and verified. F.C. §15.04(a)[1975].

(3) What the affidavit must state. F.C. §15.04(b)[1975]. This affidavit is extremely important for it is from this affidavit that persons entitled to service will be determined. If there is more than one possible father there is nothing wrong with serving more than one.

Major changes have occurred in this provision to do away with necessity of service on unknown father. We now have

(a) The father is unknown and no probable father is known.

(b) The name of the father is known but no whereabouts is known.

(c) Father has executed a statement of paternity and affidavit of relinquishment.

(d) The name and whereabouts of the father is ...

(e) The name (and whereabouts?) of the probable father is...

Query: What is a probable father?

d. Affidavit of Waiver of Interest in Child. F.C. §15.041[1975].

(1) A person may execute a "quitclaim" and waive service. F.C. §15.041(a) [1975].

(2) May be executed before birth of the child. F.C. §15.041(b)[1975].

(3) Must be verified and witnessed by two credible persons. F.C. §15.041(b) [1975].

(4) May contain denial of paternity or even access. F.C. §15.041(c)[1975].

(5) May be used against affiant in a suit wherein he seeks to establish paternity, but may not be used by others to establish his paternity. F.C. §15.041(d)[1975].

(6) What if affiant is minor?

6. Parties and Persons. F.C. §11.09(a)[1975].

a. F.C. §11.09(a)(1) thru (9)[1975] sets out all the persons entitled to service of citation and includes a listing of all the persons who might be affected by a termination suit.

b. F.C. §11.09(a)(7)[1975] provides for service of citation on each parent, including the alleged father of an illegitimate child, as to whom the parent-child relationship has not been terminated, or process has not been waived under §15.03(c)(2) of the Code. This is further reference to the ability to execute a waiver of service prior to filing of suit. See discussion supra. It is also misleading, as it seems to imply that the "alleged" father of an illegitimate child is party to a parent-child relationship.

c. Who is a parent?

A mother, father as to whom the child is legitimate, or adoptive mother or father is a parent. See F.C. §11.01(3)[1973].

Note: In all cases where the child is in fact illegitimate with respect to his father, cover all the bases you can, because if the "real" father has no notice of the termination proceeding, it will be void as to him.

d. Service by certified mail not available in termination cases. F.C. §11.09(c) (i) and (ii)[1975].

e. Citation by publication. F.C. §11.09(d) and (e)[1975].

  (1) F.C. §11.09(a)(8)[1975] and F.C. §11.09(b)[1975] taken together authorize but do not mandate service by publication on an unknown father.

  (2) Publication shall be made one time.

  (3) F.C. §11.09(e)[1975] provides an acceptable form.

  (4) If the identity of the father is unknown, due process would seem to require at least the last name of the mother (e.g. Baby Boy Jones) be used in the publication in order to give the father a reasonable opportunity to identify

the child as possibly his.

Note: The code no longer requires service by publication upon unknown fathers. Great care should be used in determining if in fact there is no "probable father," and thought should be given to the use of this added protection in any event.

f. Other forms of substituted service may be used. Rule 109a T.R.C.P.

7. Other characters in the cast: Guardian ad litem. F.C. §11.10[1975].

   a. Guardian ad litem shall be appointed unless child is petitioner or an attorney ad litem has been appointed; or unless the court finds the interests of the child will be adequately represented by a party to the suit not adverse to the child. F.C. §11.10(a).

   b. A guardian ad litem shall be appointed to represent any other person entitled to citation under §11.09 if the person is incompetent or a child, unless the person has executed an affidavit of relinquishment or affidavit of waiver of interest containing a waiver of service.

8. Social Study. F.C. §11.12[1973].

   The court may order a social study in any suit affecting the parent-child relationship. This will not be common in termination actions unless they are contested.

9. Jury trial. F.C. §11.13[1975].

   Any party can have a jury trial in a termination suit. A jury verdict would appear to be binding on the "grounds" and "best interest" issues involved.

10. Hearing. F.C. §11.14[1973].

    a. The procedure is generally the same as in civil cases. F.C. §11.14(a)[1973].

    b. The court may limit attendance on agreement of the parties. F.C. §11.14(b)[1973].

c. A representative of the agency making the social study may be compelled to testify. F.C. §11.14(c)[1973].

d, A record is kept as in other civil cases unless it is waived by the parties with the consent of the court. F.C. §11.14(d) [1973].

e. The rules of evidence apply as in other civil cases. F.C. §11.14(e)[1973].

f. When a social study is before the court the person making the report is subject to direct and cross as in civil cases generally. F.C. §11.14(f)[1973]. Magallon v. State, 523 S.W.2d 477.

11. Grounds for Termination.

a. Voluntary termination. F.C. §15.01[1973].

Where a parent is the petitioner, court may terminate upon the finding of the best interest of the child.

b. Involuntary termination. F.C. §15.02[1975].

Where a parent is not the petitioner, the court may terminate, upon a finding that termination is in the best interest of the child, and must further find one of the following:

The parent has:

(1) Voluntarily left the child alone or in the possession of another not the parent and expressed an intent not to return. F.C. §15.02(1)(A)[1975].

(2) Voluntarily left the child alone or in the possession of another not the parent without expressing an intent to return, without providing for the adequate support of the child, and remained away for a period of at least three months. F.C. §15.02(1)(B)[1975].

(3) Voluntarily left the child alone or in

the possession of another not the parent, and although expressing an intent to return, failed to do so without providing adequate support of the child and remained away for a period of at least six months. F.C. §15.02(1)(c) [1975].

(4) Knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child. F.C. §15.02(1)(D)[1975]. In Interest of R.D.P., 526 S.W.2d 135.

(5) Engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child. F.C. §15.02(1)(E)[1975]. Carter v. Dallas County Child Welfare, (Tex.Civ. App.Dallas, 12/31/75.

(6) Failed to support the child in accordance with his ability during a period of one year ending within six months of the date of the filing of the petition. F.C. §15.02(1)(F)[1975]. Wiley v. Spratlan, 529 S.W.2d 616; Floyd v. Seward, 520 S.W.2d 873; Coffey v. Lechler, 523 S.W.2d 762.

(7) Abandoned the child without identifying the child or furnishing means of identification, and the child's identity cannot be ascertained by the exercise of reasonable diligence. F.C. §15.02 (1)(G)[1975].

(8) Voluntarily, and with knowledge of the pregnancy abandoned the mother of the child beginning at a time during her pregnancy with the child and continuing through the birth, failed to provide adequate support or medical care for the mother during the period of abandonment before the birth of the child, and remained apart from the child or failed to support the child since the birth. F.C. §15.02(1)(H) [1975 .

(9) Contumaciously refused to submit to a reasonable and lawful order of the court under §34.05 of this code. F.C. §15.02(1)(I)[1975].

(10) Been the major cause of:

  (a) The failure of the child to be enrolled in school as required by the Texas Education Code. F.C. §15.02(1)(J)(i)[1975]; or

  (b) the child's absence from his home without the consent of his parents or guardian for a substantial length of time or without the intent to return. F.C. §15.02(1)(J)(ii)[1973]; or

(11) Executed before or after the suit is filed an unrevoked or irrevocable affidavit of relinquishment of parental rights as provided by §15.03 of this code. F.C. §15.02(1)(K)[1975].

11. Decree. F.C. §15.05[1973].

a. If the court terminates the parent-child relationship with respect to both parents, or to the only living parent, it shall appoint a suitable, competent adult or authorized agency as managing conservator. If an authorized agency is designated in an unrevoked or irrevocable affidavit of relinquishment, it shall be appointed managing conservator. F.C. §15.05(b)[1973].

b. Effect of Decree. F.C. §15.07[1975].

A decree of termination divests the parent and the child of all legal rights, privileges duties and powers with respect to one another, except the child retains the right to inherit from its divested parent unless the court otherwise provides.

VI. ADOPTION OF CHILDREN.

A. Who May Be Adopted?

Any child residing in this state at the time adoption petition is filed may be adopted. F.C. §16.01 [1973].

B. Who May Adopt?

Any adult may adopt. F.C. §16.02[1975].

C. Venue, F.C. §11.04(b)[1973] and Jurisdiction, F.C. §11.05[1973].

1. Adoption is an exception to the general venue rules in suits affecting the parent-child relationship, in that the adoption may be sought in the county where the child resides, the petitioners reside, or if the child is placed by an authorized agency, where the agency is located. As a practical matter most adoptions will be heard where the termination was heard, because that is the court of continuing jurisdiction, but see transfer provisions of F.C. §11.06[1973].

2. An adoption decree ends a court's continuing jurisdiction, and in any subsequent suit effecting the child you proceed as if no court ever had continuing jurisdiction. F.C. §11.05(b) [1973].

D. SOCIAL STUDY. F.C. §11.12[1973].

1. A social study is mandatory in adoption. F.C. §16.031(a)[1975].

2. The study may be made by any agency or person appointed by the court. F.C. §11.12(b)[1975].

3. If the authorized agency is the managing Conservator, the court shall appoint the agency to do the study. F.C. §11.12(b)[1975].

4. A report must be filed on a date set by the court. F.C. §11.12(c)[1975].

E. HEARING. F.C. §11.14[1973].

1. An adoption hearing shall be held not less than 40 days nor more than 60 days after the date the investigator is appointed. F.C. §16.031(b) [1975].

2. However, for good cause shown, the court may set the hearing at any time which allows adequate time for the social study. F.C. §16.031(b) [1975].

F. JURY. F.C. §11.13[1973].

No jury is authorized upon a trial of an adoption. F.C. §11.13(a)[1973].

G. RESIDENCE WITH PETITIONER. F.C. §16.04[1973].

The child must reside in the adoptive home for six months, however, this may be waived by the court.

H. CONSENTS REQUIRED. F.C. §16.05[1973].

1. If a managing conservator is appointed, his consent is required for adoption unless he is the petitioner. Consent must be in writing. F.C. §16.05(a)[1973]. Cannot be refused except for good cause. F.C. §16.05(d)[1973].
2. If the parent is the spouse of petitioner, the parent must join in the petition and need not consent. F.C. §16.05(b)[1973].
3. If the child to be adopted is 12 or over, his consent must be given in court or in writing, however, it may be waived by court. F.C. §16.05(c)[1973].

I. ATTENDANCE REQUIRED. F.C. §16.07[1973].

1. If husband and wife are joint petitioners and would be "unduly difficult" for one of them to appear, the court may waive the presence of one of the petitioners. F.C. §16.07(a)[1973].
2. If the child is 12 or older, he shall appear unless the court finds it not in his best interest. F.C. §16.07(b)[1973].

J. EFFECT OF DECREE. F.C. §16.09[1973].

The adoption decree creates the parent-child relationship as if the child were born to the adoptive parents during the marriage, F.C. §16.09(a)[1973]. This includes the right to inherit as a natural child. F.C. §16.09(b)[1973].

K. PREREQUISITES TO PETITION. F.C. §16.03[1975].

1. If the petitioner is married, both spouses must join the petition. F.C. §16.03(a)[1973].

2. The general rule is that no petition for adoption may be considered unless there has been a decree terminating the parent-child relationship as to each living parent of the child, or unless the termination proceeding is joined with the adoption. F.C. §16.03(b)[1975]. MORE ABOUT THE GENERAL RULE LATER.

(a) Exceptions to the General Rule.

(1) If it is a stepparent adoption no termination decree is required with respect to the spouse-parent. F.C. §16.03(c)[1973].

(2) If there is an affidavit of relinquishment with consent to placement for adoption, and naming D.P.W. or authorized agency as managing conservator, the adoption may be considered without the previous termination proceeding and effect of adoption decree will be to terminate parental rights of the parent executing the affidavit of relinquishment. F.C. §16.03(d)[1975].

b. Back to the General Rule. F.C. §16.03(b) [1973].

The general rule is that no adoption petition may be considered unless there has been a decree terminating the parent-child relationship as to each living parent, or unless the termination proceeding is joined with the proceeding for adoption.

(1) The case for separate proceedings. The affidavit of relinquishment to a licensed agency is irrevocable for an indefinite period. However, F.C. §16.03 (d)[1973] authorizes combined proceedings in that case in any event. But any other affidavit of relinquishment is irrevocable for not more than 60 days, yet §16.04 provides that an adoption petition shall not be granted until the child has resided in the adoptive home for 6 months. §16.04 also provides that the 6-month period may be waived if in the best interest of the child, however, there are very good reasons why the legislature placed the 6-month waiting period in

the statute in the first place. *Catholic Charities of the Diocese of Galveston, Inc. v. Harper*, 337 S.W.2d 111 (Tex.1960). Therefore, combining the hearings on the same timetable requires either

- (a) Waiting 6 months, at the risk of having an affidavit of relinquishment revoked during the last 4 months; or
- (b) Asking the court to waive the 6 months requirement "in the best interest of the child." That is to ignore the basis behind the legislature's inittial enactment of the 6-month requirement. Furthermore, if the proceedings are separated, and there is an attack upon the termination proceeding by a father who didn't get notice, etc., the attack must succeed throughout the appellate process before the father would have a right to know the identity and whereabouts of the adoptive parents and adopted child. If the proceedings are combined, there is a great risk that this information will be disclosed at an early stage and much harm done even if the attack is unsuccessful.

(2) The case for combined proceedings. The cost is generally much lower, and in 9 cases out of 10, or maybe 99 out of 100, there is no subsequent attack upon the proceeding. Somewhere, at some point, value judgments must be made on the side of practicality.

VII. SUMMARY

In the area of legitimation, termination and adoption, the Texas Family Code provides maximum flexibility, and maximum opportunity for an attorney to make value judgments on behalf of his clients, in an area where the subject matter of the litigation is of a value so high it cannot be expressed in dollars. Much construction is left for the courts. Until the many questions are clarified, it would be wise to stay as current as possible, both with the law and malpractice premiums as well.

Supplement-Chapter E

CASES DECIDED IN 1976 UNDER CHAPTERS 13, 15 AND 16 OF THE TEXAS FAMILY CODE
(as of October 1976)

CHAPTER 13 DETERMINATION OF PATERNITY
-sections:

13.01

In re K, 535 S.W.2d 168 (Tex. 1976)

13.02-.08
13.09

Wickware v. Session, 538 S.W.2d 466 (Tex. Civ. App.--Tyler 1976, no writ)

13.21

In re K, *supra*

13.22-.43

CHAPTER 15 TERMINATION OF THE PARENT-CHILD RELATIONSHIP
-sections:

15.01
15.02

Pattison v. Spratlan, 539 S.W.2d 60 (Tex.), *aff'g as modified*, 535 S.W.2d 48 (Tex. Civ. App.--Tyler 1976)
In re K, *supra*
Ervin v. Wichita County Family Court Services, 533 S.W.2d 947 (Tex. Civ. App.--Fort Worth 1976, no writ)
Hall v. Harris County Child Welfare Unit, 533 S.W.2d 121 (Tex. Civ. App.--Houston [14th Dist.] 1976, no writ)
Holley v. Adams, 532 S.W.2d 694 (Tex. Civ. App.--Austin 1976, writ granted)
Schiesser v. State, 531 S.W.2d 922 (Tex. Civ. App.--Corpus Christi 1976, writ granted)

15.021
15.03

Pattison v. Spratlan, 535 S.W.2d 48 (Tex. Civ. App.--Tyler), *aff'd as modified*, 539 S.W.2d 60 (Tex. 1976)
Rogers v. Searle, 533 S.W.2d 433 (Tex. Civ. App.--Corpus Christi 1976, writ granted)(companion case, 533 S.W.2d 440 (1976))

15.04
15.041

Ervin, supra
Rogers v. Searle, 533 S.W.2d 440 (Tex. Civ. App.--Corpus Christi 1976, no writ)(companion case, 533 S.W.2d 433 (1976))
Walker v. Sheaves, 533 S.W.2d 87 (Tex. Civ. App.--San Antonio 1976, writ ref'd n.r.e.)

15.05-.06
15.07

Glover v. Moore, 536 S.W.2d 78 (Tex. Civ. App.--Eastland 1976, no writ)
Banegas v. Holmquist, 535 S.W.2d 410 (Tex. Civ. App.--El Paso 1976, no writ)
Rogers v. Searle, 533 S.W.2d 440, supra

CHAPTER 16 ADOPTION

-section:

16.01-.07
16.08

In re Herd, 537 S.W.2d 950 (Tex. Civ. App.--Amarillo 1976)

16.09

Banegas, supra

16.10

In re Herd, supra

16.12-.55

PROTECTION OF CHILDREN THROUGH LICENSING OF CHILD CARE AND CHILD PLACING SERVICES

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September 1976 F

PROTECTION OF CHILDREN THROUGH LICENSING OF CHILD CARE AND CHILD PLACING SERVICES

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PROTECTION OF CHILDREN THROUGH LICENSING OF CHILD CARE AND CHILD PLACING SERVICES

M. Lynn Taylor

I. A BIT OF HISTORY

In 1973, the State of Texas discovered that there were such things as child care and child placing agencies and facilities. Citizens of the state made this discovery as newspapers daily reported allegations of mistreatment and neglect of children within child care facilities. The citizens of this state found out what professional child care workers had known for years - that in addition to charitable and nonprofit operations, a lot of people were making money taking care of children. They still are.

The most disturbing revelation of 1973, however, was that the licensing statute and standards then in effect were often not enforced or that enforcement was spotty and inconsistent. The public learned in the wake of the Artesia Hall excitement that a number of child care facilities had been operating for years without the required licenses.

It became clear in 1973 that several states, notably Illinois, were using private Texas child care facilities as dumping grounds for state wards and other unwanted children. It was, and still is, very convenient. States such as Illinois have vastly inadequate resources for the placement of children who become wards of the state. The problem was that the receiving facilities, almost all of them charities, could pick and choose which children they would accept. The children they chose were the "good" kids, not the behavior problems. The "problem" kids came to Texas on contract with the private Texas facilities. A child advocacy lawyer in Chicago complained that many of the Illinois placements were being mistreated, abused, or neglected in Texas facilities.

There followed investigations by the Attorneys General of Texas and Illinois, aimed primarily at attempting to determine whether or not the operators of the Texas facilities were paying kickbacks to Illinois caseworkers in exchange for securing Illinois placements. No kickbacks or other illegal inducements were uncovered. No kickbacks were needed! Illinois had more kids than it could handle and the Texas child care operators were happy to have the Illinois kids and the Illinois money.

While the various investigations did not produce evidence of illegal inducements, they did illustrate a fundamental problem. Illinois caseworkers having placed the children in Texas facilities had little direct supervision of the Illinois wards. The net result was that Illinois withdrew many, but not all, of their children. A number of placements by the Illinois

Department of Children and Family Services remain in Texas facilities.

The year 1973 rivoted the attention of the citizens of Texas and child care professionals on the welfare of a particular group of children - those who reside in child care facilities. Since then, the Legislature has enacted the Child Care Licensing Act, new minimum standards have been promulgated, and the Department of Public Welfare has improved and upgraded its licensing operation.

There is still one unanswered question, the only important question - how effective are the licensing procedures in protecting children in child care facilities and whose lives are the object of action by child placing agencies.

In these pages we will discuss the current licensing and enforcement procedures, most of which are as yet untried and untested. For the most part, we will eschew the theoretical and abstract in favor of the practical aspects of protecting children through licensing except insofar as questions outnumber answers.

II. THE BASIS FOR LICENSING OF CHILD RELATED OPERATIONS

The licensing by the State Department of Public Welfare by child care facilities and child placing agencies has only one basis in terms of permissible state action - the exercise of the state police power to protect children. It is far beyond the scope of legitimate legal debate that this and every other state has an interest, exercisable by the police power, in protecting its children. Needless to say, however, this interest has often clashed with constitutional rights in the fields of freedom of speech and communication and religion. Where such clashes have occurred and where the exercise of the state police power does in fact infringe to some degree upon constitutionally protected interests such as First Amendment free exercise of religion, the infringement must be shown to be reasonable and necessary.

The United States Supreme Court decision in Prince v. Massachusetts, 321 U.S. 158 (1943) held that "The state's authority over children's activities is broader than over like action of adults," adding "The right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death." The Prince Court upheld a Massachusetts statute providing that no minor [then defined as a boy under the age of twelve (12) or a girl under the age of eighteen (18)] could sell upon the streets any newspapers or other articles of merchandise and laid the foundation for additional, though as we shall see not unlimited, exercise of the state police power in the protection of children. The Court in Prince no doubt anticipated the decades of difficult application and, as courts are wont to do, emphasized that the holding was limited to the facts of Prince.

Justice Rutledge, writing for the majority, however, provided language oft quoted in later cases, describing the right of the state to protect children by restricting otherwise protected rights:

> ...the family itself is not beyond regulation in the public interest, as against a claim of religious liberty. Reynolds v. United States, 133 U.S. 333. And neither rights of religion nor rights of parenthood are beyond limitation. Acting to guard the general interest in youth's well-being, the state as parens patriae may restrict the parent's control by requiring school attendance, regulating or prohibiting the child's labor and in many other ways. Its authority is not nullified merely because the parent grounds his claim on religion or conscience. Thus, he cannot claim freedom from compulsory vaccination for the child more than for himself on religious grounds...It is sufficient to show what indeed appellant (parent) hardly disputes, that the state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare; and that includes, to some extent, matters of conscience and religious conviction.

We will more fully discuss the religious freedom implications for child care and placing licensing later. Suffice it to say that the right of the state to protect children within its boundaries, regardless of their legal domicile, is no longer open to serious debate as to the general proposition. The issue of the state interest in licensing of child care facilities was decided in Small v. State, 360 S.W.2d 443 (Tex. Civ.App. 1962, error ref'd).

III. LICENSING OF CHILD CARE AND CHILD PLACING AGENCIES PRIOR TO 1976.

Prior to January 1, 1976, the licensing of child care and placing services under Texas law was governed by the Public Welfare Act of 1941, Article 695c, V.T.C.S., a patched and much amended document. Prior to amendments by the Legislature in 1953, the Public Welfare Act of 1941 provided no real protection to children in child care facilities. Indeed, prior to 1939, the Board of Control had the real authority for child welfare.

Prior to enactment of the Child Care Licensing Act in 1975, child care licensing was governed by Section 8(a) of the Public Welfare Act of 1941. Section 8(a) was a hodgepodge of inconsistent, openended, inconclusive and poorly drafted provisions.

The various definitions of child caring institutions were rather arbitrary. The most startling imperfection of Section 8(a), however, was that it did not define the word "child", a rather glaring oversight. The statute did clearly say that persons subject to placement were those under the age of sixteen (16), but who were these persons in child caring institutions? That, of course, was a basic question since the Department of Public Welfare had authority to license only facilities caring for "children".

For some reason, shrouded in the mists of time, the Department had operated under the administrative interpretation that for purposes of licensing child care facilities, a child was a person under the age of sixteen (16) years. It is perhaps indicative of the lack of general interest that the Department's interpretation remained operative until 1974.

After enactment of Article 5923b, V.T.C.S., otherwise known as the Eighteen Year Old Majority Statute, the Department sought an attorney general's opinion on the application of the licensing statute. Quite predictably, the Attorney General ruled in Attorney General Opinion H-104 (1973) that a child was a person under the age of eighteen (18) years and that Department jurisdiction for licensing extended to that age. The opinion was simple - if a person is not an adult he is a child.

This interpretation was upheld in the first installment of State of Texas v. Roloff Evangelistic Enterprises, Inc., Civil No. 110-014-A, District Court of Nueces County, 28th Judicial District of Texas, February 1, 1974. However, this interpretation was overturned by the Texas Supreme Court in Ex Parte Lester Roloff, 510 S.W.2d 513 (1974).[1] By this decision, the Court created a legal limbo into which it placed all sixteen (16) and seventeen (17) year old persons. It denied to those persons the full rights of adulthood on the one hand and on the other denied to the State the right and obligation to protect them while residents of child care institutions. During the period of time from May, 1974, when Ex Parte Lester Roloff was issued until January 1, 1976, when the Child Care Licensing Act became effective, sixteen (16) and seventeen (17) year olds were legal nonpersons. Operators of child-caring institutions with less than six (6) children under the age of six (16) years but with a hundred persons aged sixteen (16) and seventeen (17) could operate wholly without a license. It was a strange situation. It was a dangerous situation.

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[1] The most extensive litigation under the old licensing act, Section 8(a), involved facilities operated by the Roloff Evangelistic Enterprises, Inc. The scores of pleadings, hundreds of pages of briefs, and thousands of pages of testimony demonstrate the difficulties in enforcing the old statute. Ironically, the State's original petition and the final judgment were entered on the same day - August 3, 1973. The next two and one half years were spent attempting to enforce the agreed judgment. A final judgment of contempt was entered by the Nueces County district court in June, 1976, fully six months after the old statute was removed from the books. The contempt judgment covered contumacious conduct committed during the life of the old statute.

IV. APPLICATION OF THE NEW CHILD CARE LICENSING ACT

A. CRITICAL DEFINITIONS UNDER THE CHILD CARE LICENSING ACT OF 1975[2]

1. What is a child? The Child Care Licensing Act at Sec. 2(4) defines a "child" as an individual under the age of 18 years.

2. Categories of child care facilities required to be licensed. "Child care facility" under the Child Care Licensing Act describes a number of different type facilities, each of which is subject to licensing. They include:

    a. Child-caring institution, defined as a child care facility which provides care for more than twelve (12) children for twenty-four (24) hours a day, including facilities known as children's homes, halfway houses, residential treatment camps, emergency shelters, and training for correctional schools for children. Sec. 2(6)

    b. Foster group home, defined as a child care facility which provides care for seven (7) to twelve (12) children for twenty-four (24) hours a day. Sec. 2(7)

    c. Foster family home, defined as a child care facility which provides care for not more than six (6) children for twenty-four (24) hours a day. Sec. 2(8)

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[2] References hereafter are to the Child Care Licensing Act, Article 695c-3, V.T.C.S., which repealed Section 8(a) of Article 695c unless otherwise noted.

d. Day care center, defined as a child care facility which provides care for more than twelve (12) children under fourteen (14) years of age for less than twenty-four (24) hours a day. Sec. 2(9)

e. Group day care home, defined as a child care facility which provides care for seven (7) to twelve (12) children under fourteen (14) years of age for less than twenty-four (24) hours a day. Sec 2(10)

f. Registered family homes, defined as a child care facility which regularly provides care in the caretaker's own residence for not more than six (6) children under fourteen (14) years of age, excluding the caretaker's own children, and which provides care after school hours for not more than six (6) additional elementary school siblings of the other children given care, provided that the total number of children including the caretaker's own does not exceed twelve (12) at any given time.

g. Family day home, defined as a child care facility which provides care for not more than six (6) children under fourteen (14) years of age for less than twenty-four (24) hours a day not in the caretaker's own residence nor in the residence of one or more of such children.

h. Agency home, defined as a private home providing care for not more than six (6) children, which is used only by a licensed child placing agency, and which meets division standards.

i. Child placing agency, defined as a person other than the natural parents or guardian of the child who plans for the placement of or places a child in an institution, agency home, or adoptive home.

3. Note: While the above definitions may seem overly detailed and technical, it is important to remember that as opposed to the previous statute, the Child Care Licensing Act was drafted with an eye to recognizing the different types of child care provided and allowing for the tailoring of licensing standards to reflect the differences among the services offered. Failure to do so

would require either standards which are so general as to be of no value or the practical elimination of many services in certain areas of the state.

4. "State of Texas" or "State". Under the new Child Care Licensing Act, the State of Texas or state does not include political subdivisions of the state. This may have significant implications for the enforcement of the Act as we shall see later.

5. "Person". The new statute removes any ambiguity as to the applicability of the enforcement provisions of the Act by defining a "person" as an individual, a public or private agency, an association, or a corporation. This removes any doubt that the criminal penalty provisions of the Act are applicable to corporations. Under the old statute, the criminal misdemeanor santions could be invoked only against individual operators. This made the criminal sanctions very nearly meaningless since many operations are run by corporations, albeit small closely held or family corporations.

B. REQUIRED LICENSES

1. Under the old statute. One of the many drafting and interpretation problems hidden within Article 695c was that the statute did not say specifically that child care facilities could not operate without licenses. It simply provided that operators of such facilities "shall obtain a license." The enforcement provisions did not specifically say that failure to obtain the appropriate license was actionable.

2. Under the Child Care Licensing Act. There is no longer any ambiguity about the requirement that child care facilities be licensed. Section 4(a) provides:

> No person may operate a child care facility or child placing agency unless he holds a valid licensed issued by the division (Dept.).

3. General exemptions. Much of the debate in the Legislature concerning the enactment of the Act dealt with exemptions. As enacted, the licenses are not required for operation of the following:

a. state-operated facilities;

b. agency homes;

c. facilities operated in connection with a church, shopping center, business, or establishment where children are cared for during short periods of time while parents or individuals in charge of the children are attending church services, shopping, or engaging in other activities on or near the premises, which with respect to churches or other religious institutions shall include but not be limited to Sunday School, retreats, or weekly catechism or other schools or classes for religious instruction;

d. schools or classes for religious instruction conducted by churches during the summer months for not more than two weeks, known as vacation Bible schools;

e. youth camps licensed by the State Department of Health;

f. hospitals licensed by the Texas Department of Mental Health and Mental Retardation or the State Department of Health;

g. an educational facility accredited by the Central Education Agency or the Southern Association of Colleges and Schools that operate primarily for educational purposes in grades kindergarten and above;

h. an educational facility that operates solely for educational purposes in grades kindergarten through at least grade two and does not provide custodial care for more than one hour during the hours before or after the customary school day, and are members of an organization which promulgates, publishes, and requires compliance with the health, safety, fire, and sanitation standards at least equal to those required by state, municipal, and county health, safety, fire and sanitation codes;

i. kindergarten or preschool educational programs operated as part of the public schools accredited by the Central Education

Agency that offer educational programs through grade six and that do not provide custodial care during hours before or after the customary school day;

j. registered family homes as defined by the Act.

k. Note: It is from the language of the numerous general exemptions that potentially difficult litigation may be anticipated. Certainly, many of the exemptions will require judicial interpretation.

4. Religious exemption. One of the most interesting additions to the Child Care Licensing Act is that dealing with freedom of religion. The Legislature included the following language in Sec.1(b), the intent, purpose and policy statement:

> ...It is the further legislative intent that the freedom of religion of all citizens shall be inviolate. Nothing in this Act shall give any government agency jurisdiction or authority to regulate, control, supervise, or in any way be involved in the form, manner, or content of any religious instruction or the cirriculum of a school sponsored by a church or religious organization.

a. While this declaration of Legislative purpose has not as yet been passed upon by an appellate court, it does not appear to have added or subtracted from the scope of legitimate constitutional action available in the resolution of *Roloff Evangelistic Enterprises, Inc., et al v. State of Texas*, presently on appeal to the Texas Court of Civil Appeals, Austin. The case is an appeal from granting of a temporary injunction enjoining employees of the Roloff Homes from refusing to allow Department of Public Welfare employees to enter and inspect the three child care facilities operated by the Corporation. The case is set for oral argument before the Court of Civil Appeals on January 26, 1977.

b. It is clear regardless of the outcome of the *Roloff* case that in addition to this strictly statutory restriction, the United States Constitution imposes limits to the involvement of the State in religious activities. *Jehovah's Witnesses in the State of Washington et al v. King County Hospital Unit No. 1 et al*, 278 F.Supp. 488 (W.D. Wash. 1967), aff'd. 390 U.S. 598 (1968); *The State of Ohio v. Whisner et al*, 47 Ohio St. 2d 181 (1976); *Wisconsin v. Yoder et al*, 406 U.S. 205 (1972).

c. The problem of remaining within the strictures of Sec. 1(b) and the holdings of the U.S. Supreme Court is basically one of standard drafting.

C. *MECHANICS OF ENFORCEMENT*. The Child Care Licensing Act is significantly improved in terms of effective enforcement tools available.

1. *Criminal sanctions*. Operating a child care facility or child placing agency without a license is punishable as a Class B misdemeanor. Sec. 24(a). Publicly advertising for an unlicensed facility is punishable as a Class C misdemeanor. Sec. 24(b).

   Note: Enforcement by criminal prosecution is solely the responsibility of local prosecutors. The Texas Attorney General's Office has no criminal jurisdiction whatsoever. Licensing workers should therefore see that their local prosecutors understand the Act and attempt to cultivate their cooperation where criminal charges are sought to be filed. Cooperation of local county and district attorneys has in the past been one of the weak links in enforcing the child care licensing legislation.

2. *Civil penalties*. One of the two or three most significant improvements in the enforcement capabilities under the Child Care Licensing Act has been the addition of meaningful civil penalties. Now, operators of unlicensed facilities are subject to civil penalties of not less than $50.00 nor more than $1,000.00 for each day and act of violation. These penalties are cumulative and in addition to the other remedies provided in the Act. Sec. 23.

   Example: Mr. X has operated four separate child-caring institutions each day for the past one hundred (100) days without the benefit of a license. Upon a finding of the court or jury that such operations have taken place, the State is entitled to a minimum civil penalty of $25,000.00 or a maximum of $500,000.00. This is basically the same civil penalty structure which has proven effective in the Texas anti-pollution statute.

a. It is also worthy of note that the civil penalties apply not only for operating without a license but also for violations of any other provisions of the Act or rule, regulation, or standard which "threatens serious harm to the children in the facility" or for violation of any standard three or more times within a period of a year. Of course, incessant violations should also result in utilization of the revocation provisions of Sec. 19.

3. Emergency closure. Sec. 21 of the Act provides the mechanism for emergency closure of a facility and the placement of the children in that facility in another facility under the following circumstances:

   a. If the Division (Department) finds any violation of this Act or the Department's minimum standards or rules and regulations by a facility other than a state-operated facility that places the children in the facility in immediate peril. (Note: the definition of "immediate peril" is not supplied and will no doubt be troublesome when this mechanism is used.)

   b. If a licensing division representative finds conditions placing children in peril, the representative must immediately contact the director of the licensing division and ask that the director or his designee conduct an immediate inspection in order to verify the findings of the licensing representative. If verification is made, the division may close the facility immediately without any recourse to the courts, except as discussed below.

   c. Note: The injunctive relief provisions of the Act are so tight and tough that it is unlikely that the emergency closure provisions can really expedite the protection of children within the facilities. It is a helpful tool, however, in cases where for some reason, the Department and the Attorney General's Office are unable to arrange for an immediate hearing on an application for temporary restraining order. It is strictly an emergency measure and filing of a petition for injunctive relief must be made after the facility is closed.

4. Injunctive relief. Sec. 22 of the Act may be the most important section in the Act in terms of protecting children within child care facilities. It provides:

   a. Whenever it appears that a person has violated any provision of this Act or of any rule, regulation, or standard of the department, the division may cause a civil suit to be instituted in a district court of Travis County or in the county in which the facility is located, for injunctive relief, including temporary restraining orders, to restrain the person from continuing the violation or threat of violation.

   b. Proof required. In an action brought under Sec. 22, the State must prove only that a person is violating or threatening to violate any provision of the Act or of any rule, regulation, standard, or order of the Board. Having met this burden of proof, the district court shall grant the injunctive relief the facts may warrant.

   c. Note: Although the provisions of Sec. 22 make it even clearer, it has long been the law in Texas that the State is entitled to injunctive relief against the violation of its laws even without a showing of irreparable injury as would be required in an application for injunctive relief in a regular civil suit.

      Example: Mr. X is found to be operating a child-caring facility without a license. Upon a showing that he is so operating, the State is entitled to an injunction or temporary restraining order enjoining such operation. The State need not show irreparable injury until temporary relief is granted.

5. Suit by the State. Unlike the previous statute which provided that civil enforcement actions could be brought by county or district attorneys, Sec. 22(b) of the Child Care Licensing Act provides that the attorney general shall institute suits for injunctive relief and civil penalties under the new Act.

6. Inspection. Sec. 7 of the Act is as important in the protection of children as any other. It authorizes representatives of the Department's licensing division to "visit a child care facility or child placing agency during the hours of operation for purposes of investigation, inspection, and evaluation.

   In terms of protection, it is noteworthy that the above inspection applies not only to licensed facilities, but to facilities which, for one reason or another, are unlicensed.

   The Act does not define "hours of operation." One trial court has defined "hours of operation" as 8:00 a.m. until 8:00 p.m. It can be argued that for twenty-four (24) hour a day operations, Sec. 7, is applicable during the entire twenty-four (24) hour period.

D. RELATIONSHIP WITH OTHER DEPARTMENT PROTECTIVE SERVICES

1. Complaints. The Child Care Licensing Act provides at Sec. 7(c) that an investigation must be made of a facility if a complaint is received about it. Depending, of course, upon the nature of the complaint, protective services personnel should be involved in such investigations. It must be understood that the licensing system provided by the Child Care Licensing Act anticipates only minimum standards and further that the licensing procedure is not the ultimate tool in protecting children within the facilities. The remedies available to correct abuse of children provided by the Family Code must be utilized in connection with the licensing procedures. Basically, the licensing process is preventative in nature, not remedial.

V. SUMMARY

The Child Care Licensing Act is a refined approach to the protection of children within child care facilities. It will be a long time before it is clear whether or not it will prove adequately responsive to the needs so dramatically apparent in 1973.[3] Additional refinements will no doubt be required.[4]

The Child Care Licensing Act, however, provides only a framework.[5] The quality of protection afforded can be no better than the quality of the licensing standards promulgated thereunder and the committment of the Department of Public Welfare to enforcement of the standards. As this article is written, however, Texas has a strong licensing statute with an impressive battery of enforcement remedies. There can be no excuse for failure to protect children within the facilities in this state.

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[3] For additional reading, see The Report on the Interim Study on Child-Caring in Texas, Committee on Human Resources, House of Representatives, 63rd Legislature, 1974; Interim Report of John L. Hill, Attorney General of Texas, In Re: The Placement of Illinois Wards in Texas Child-Caring Institutions, Sept. 23, 1973.

[4] The defense in the first enforcement proceeding under the new Act presently pending and set for trial October 18, 1976, raises constitutional objections to the Act and the Minimum Standards for Institutions Providing Basic Child Care.

[5] The most extensive litigation currently underway involving the placement of out of state children in Texas private facilities is *Gary W. et al v. State of Louisiana et al*, No. 74-2412 (E.D. La., July, 1976). The interim order entered by Judge Rubin in *Gary W.* may have considerable implications for out of state placements in Texas facilities. Also of possible significance for out of state placements is *East Texas Guidance and Achievement Center et al v. Brockette et al*, No. 76-113 (E.D. Tex.) which was argued to a three-judge court on September 1, 1976. This is a constitutional attack upon Section 21.0311 of the Texas Education Code, enacted by the last session of the Legislature, which requires child-caring institutions to pay tuition to the local school districts where the residents are enrolled. Unless the section is held unconstitutional, it could affect the economic attractiveness to other states of placing wards in Texas private facilities.

CHILD ABUSE AND NEGLECT
CASE EXAMPLE

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CHILD ABUSE AND NEGLECT CASE EXAMPLE

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TEXAS FAMILY CODE CITATIONS

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Forward

The primary purpose of this child abuse and neglect case example is to say that mistreatment of children really does happen, that actual physical and emotional harm of children is the result and that parents being an integral part of the protective process is the key to helping the child.

Other purposes of giving a case example are to illustrate the Department's protective intervention and the court process. To facilitate these purposes, we have cited relevant sections of the Texas Family Code, cross-referenced other papers in this book and made other comments.

In the statewide Family Law Conference of 1974, sponsored by the University of Texas School of Law and the Texas Department of Public Welfare, case vignettes were used in discussion groups. Many participants said this was a most valuable part of the two day conference. Lacking time in these regional conferences of 1976, we have included this case example which could be used to initiate discussions of the complex issues in protecting children. The legal and social work procedures, assessments, plans and activities illustrated are but a few of many that might be applicable.

Family:

Mr. R. - father
Mrs. R. - Mother
Susie R. - 11 year-old
Sammie R. - 5 year-old
Paul R.- 3 year-old
Linda R. - 1-1/2 year-old
Mrs. S. - mother of Mrs. R.
Mrs. T. - sister of Mr. R.

First Referral:

At 10:30 p.m.[1] in March 1975, the A. County child welfare unit of the Texas State Department of Public Welfare received a call from a person, identifying herself only as a neighbor, regarding children in her apartment complex who had been left without adult supervision. TEX FAMILY CODE ANN., sec. 34.02(a)(1)(Supp. 1975) [hereinafter cited as F. C.], F. C., sec. 34.01 (1974), F.C., sec. 34.07 (a)(b)(1974). The children were "running wild all over the apartment," begging for food and crying. The oldest child, carrying a small child who had a black eye, was trying to round up the younger children, but they wouldn't mind her.[2] The oldest child had told the complainant that her family had moved there only a few days before and that her parents had been unable to get work to buy food. She did not know where her parents were nor when they would return. Nor did she know of anyone the neighbor could call to come care for the children during the parents' absence.

Since the complainant did not want to get further involved;[3] the worker called the apartment manager to see if she could keep the children, but the manager did not answer the phone. The children appeared to be in immediate danger so the worker went to the apartment complex to further investigate the situation and to make plans for the care of the children as needed. F. C., sec. 34.05(a)(1974).[4]

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1. The Department receives reports on a 24-hour per day basis. Response to reports is determined by the degree of danger to the child and the availability of resources to protect them.
2. See Mr. Biel's article, page B-5, for a discussion of persons required to report child abuse and neglect.
3. See Mr. Biel's article, page B-9, for a discussion of anonymous reporting.
4. See Mr. Biel's article, page B-12, for a discussion of the investigation.

The worker called the police and told them of her plans so that they could be alert to her possible need for assistance should the parents return and be belligerent or threatening.

When the worker got to the apartment, the four Anglo children were sitting at the pool splashing their feet in the water and eating a loaf of bread, which they said had been given to them by a nice lady. The worker introduced herself to them and said she had heard they were hungry and that their parents were not home to take care of them. She offered them some cookies and milk she had brought, and talked to them about how to find someone to take care of them. F.C. sec. 34.05(c)(1974).

While the children ate, the worker observed their behavior and conditions[5]. They did not appear to be cold nor frightened. They said their names and ages were: Susie, age 11; Sammie, age 5; Paul, age 3; and Linda, age 1-1/2. Susie was dressed in very tight and discolored shorts and a halter top, and she had no visible bruises, cuts, sores, scars or signs of illness. She was holding Linda, who had on only a diaper which smelled strongly of urine and feces. Linda's left eye had brown, black and gray bruises around it, though it did not look swollen. She had a scabby cut through her left eyebrow and an abrasion on her left cheek, the scab of which was peeling off. Other than also having dirty hands and feet, she otherwise appeared to be free of other cuts, sores, scars or signs of illness. Sammie had on cut-off bluejean shorts which were pinned at the waist to keep them from falling off. He scratched his arms, legs, chest and back constantly and had clumps of scabby, seeping impetigo-appearing sores. He talked in a loud voice, speaking with a lisp apparently due to four missing front teeth. He moved constantly, talking, squirming, splashing water, pinching or hitting the other children, etc. Paul, dressed only in a pair of underwear, never spoke to or looked at the worker. He twirled a lock of his hair with his left hand and either ate with his right hand or sucked his thumb. He had no observable sores, bruises, cuts, scars or signs of physical illness. F. C. sec. 34.05(b)(1)(3)(1974).

The worker expressed concern over Linda's black eye and Sammie's sores and asked the children if they would go to the apartment to let her look at Linda and Sammie closer. While they walked to the apartment, Susie said Linda had gotten the black eye, cut and abrasion by falling down the stairs the week before and that their mother had taken her to a doctor, though Susie did not know his name. When they got to the apartment, Susie showed the worker the medicine for both children, which were non-prescription and did not have the name of a doctor or pharmacist.

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5. See Dr. Hebeler's article, page H-2, for a discussion of victims, page H-5 for types of abuse and neglect, and page H-7 for identification of child abuse and neglect. Mr. Anderson's article page A-9 defines neglect. Mr. Biel's article, page B-7 defines abuse and neglect.

The worker looked at the children a little closer in the light of the apartment and found no further signs of possible physical illness or mistreatment. The 2-bedroom apartment had standard looking apartment furniture with clothes, toys, suitcases, boxes, dirty dishes, filled ashtrays, beer and softdrink cans, liquor bottles, newspapers, etc. scattered randomly and profusely throughout the rooms. The apartment smelled strongly of spoiled food, dirty diapers, alcoholic beverages and stale cigarette smoke. No major physical hazards were apparent, however. F. C. sec. 34.05(b)(5)(1974).

In response to the worker's questions, Susie said they had moved to this apartment last week and that their parents had been gone since morning. They had told the children they were going job hunting. Susie said she had been told to babysit with the younger children, as she had not yet enrolled in school. She said their parents always came home, though sometimes it was not until the next morning. She said her mother and father's names were Mr. and Mrs. R. F.C. sec. 34.05(b)(6)(1974).

The worker asked the children how they would feel if someone came to stay with them at the apartment until their parents came home. The children liked that idea but knew of no friends or relatives who could come for them except "Grandma S.", who lived in B. City. The worker asked them how they would like to go to a nice lady's house to spend the night until the worker talked to their parents about leaving the children alone. Susie asked if the worker meant for them to go to a foster home. When the worker said yes, Susie began crying and said that her father had told her never to let anyone take the children from their home again. The worker put her arm around Susie and told her she really wanted them to stay in their home if they could be safe, so why didn't they try to pick up the spoiled food and try real hard to find someone to come to the home to care for the children. All of the children joined in the effort to clean up, even the baby, who contributed little to the clean-up but whose antics made them all laugh. As they worked, the worker asked where the children had been taken from their home before, and Susie said that it was in C. City. F.C. sec. 34.05(b)(7)(1974). The worker asked the children why they had gone to a foster home. Susie replied that her mother had been sick and they did not know where their father was. The worker told Susie that if the children had to be taken to a foster home for protection, it would not be because Susie wasn't taking as good care of the children as she could, but it would be because the worker and Judge had decided that this would be best for them.

The worker's assessment was that all the children were in immediate danger and had probably been neglected by the combination of such circumstances as: (1) being left in the supervision of an 11 year-old with such dangers around as an open and unguarded swimming pool,

(2) an unsanitary and unhealthy apartment, (3) the children's questionable physical states (Linda's black eye and dirty diapers and Sammie's sores), (4) emotional behaviors (Paul's withdrawal and Sammie's overactivity), and/or (5) inappropriate role responsibilities (Susie was too young to have the care of so many such young children with their physical/emotional problems in such a dangerous setting). Since providing adult supervision and care for the children would minimally protect the children, and since removal would have, even more than usual, upset the children because of the parents' unrealistic expectations that they prevent removal, the worker decided to contact the apartment manager, neighbors or a local agency for a homemaker to babysit with the children rather than arrange for emergency placement. The worker would then follow up immediately with the parents to investigate further and help the family correct the neglectful circumstances.

The apartment manager said she would bed the children down in her apartment because their mother was such a nice quiet woman "who always spoke" to her. The children were not distressed to stay with someone they knew. The apartment manager promised to call the worker the next day to let her know when the parents came home. The worker left a message in the children's apartment to tell the parents what had happened, where the children were and asking them to call her the next day.

The next day, the worker recorded the referral and action taken and reported the case to the Child Abuse and Neglect Report and Inquiry System (CANRIS)[6], where she found no previous history of a referral on the family. She called the apartment manager and learned that the parents had come for the children around 2:00 a.m., paid their rent, and moved by daylight, leaving no forwarding address. The apartment manager said the father had been very angry that the "welfare" had intervened with the children and had berated Susie for letting the incident occur. The apartment manager was more concerned about Linda than Susie, however, because the father had called her "a little bastard", had shoved her, forcing her to walk up the stairs to their apartment and loudly refused to let Susie or the mother carry her. When the worker asked why the apartment manager hadn't called her at that time, she said it was too late at night for such a young woman as the worker to be out on the streets, and she was afraid of what the father might do to her if he found that she had called the worker.

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6. The Child Abuse and Neglect Report and Inquiry System (CANRIS) is the Department's central registry of abuse and neglect reports, a system mandated by F. C. sec. 34.06(1974). This system stores reports of abuse or neglect for instant retrieval during business hours by Departmental protective service staff only under strictest confidentiality. See Mr. Biel's article, page B-18, for a discussion of the central registry.

In the ensuing days, the worker checked with the post office for a forwarding address on the family and with the B. City telephone company to locate the grandmother or the parents, but had no success. She alerted the B. and C. cities' county child welfare units that the family might move there and to take immediate action to assess the situation if they were located. The worker reported the findings of the investigation to CANRIS, recorded the subsequent case activities and closed the case.

Second Referral:

At 3:30 p.m. in September 1975, the B. County child welfare unit, of the Texas State Department of Public Welfare, received a call from a school nurse concerning 11-year old Susie R. who was in tears and terrified about going home from school because of her father.[7] F. C. sec. 34.02(a)(1)(Supp. 1975), F.C. sec.34.01(1974), F.C. sec. 34.07 (a)(b)(Supp. 1975). The day before, he had yelled at her for letting her 5 year-old brother, Sammie, run wild when she got home from school. She said she was supposed to babysit for him and their 3 year-old brother, Paul. She said her father had told her the boys were her responsibility and it was her fault when anything happened to them. The father had beaten Sammie with a belt for not minding Susie[8], and she was afraid that Sammie would hold her responsible, and still being angry, try to get her in trouble. She was very worried about him because their father beat him worse each time, but Sammie would just not stop being bad. Susie said Sammie was just too active because both boys had been locked up in the apartment all day. She said she never got to go anywhere with school or neighborhood playmates because her father felt that family came before everyone else.

When the nurse called child welfare, Susie started crying even harder, saying her father would fuss at her even worse than last time for letting "the welfare" know about family problems. The worker thanked the nurse for the referral and told her he would come to the school immediately to talk with Susie and to see the boys at home. F. C. sec. 34.05(a)(1974). Due to the emergency nature of the situation, the worker asked another worker to report to CANRIS while he went to the school. The CANRIS report and history inquiry revealed a referral made by the A. County child welfare unit (see first referral), which was contacted for the details of the previous case activity. When he arrived at the school, the worker called his office and obtained this information. At the school, the worker discussed the situation with Susie and the nurse. Susie did not appear to be physically abused, but perhaps was being exploited by the inappropriate role expectation of babysitting every day with her siblings after school, and was being emotionally abused by the father when she didn't meet his expectations. This appeared to be a pattern as it repeated the circumstances of the first referral.

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[7] See Dr. Hebeler's article, page H-17, regarding referrals by schools.
[8] IBID, Page H-4, for a discussion of the abusive episode.

The worker discussed his concerns about Sammie and Paul with Susie and asked her to go to her home with him to see about their safety and to contact their parents about the referral and subsequent Departmental action. Susie accompanied the worker while crying and talking about her fears that her father would blame her and fuss at her. The worker explained that her parents had the right to know what was being done with their children and therefore, the worker must call them, but the worker would not tell them how the Department got the referral, nor of Susie's part in it.[9]

When the worker and Susie arrived at the apartment and Susie unlocked the door, the worker found the two boys inside without any supervision. Sammie was constantly active, talking, running and playing. He was dressed in cut-off bluejeans and had belt strap and buckle marks on his back, buttocks and legs. He also had five or six large, slightly discolored roundish patches on his arms and legs, resembling scars from severe impetigo infection. Paul was lying on the couch watching TV, wearing cut-off bluejeans, sucking his thumb and twirling a lock of his hair. He did not look at nor talk to the worker. He did not appear to have any cuts, bruises, sores or other signs of physical illness. The non-air-conditioned, two bedroom apartment had the standard apartment furniture with clothes, toys, newspapers, dirty dishes, softdrink and alcohol bottles and cans scattered profusely throughout all the rooms. All the windows were closed and locked and the apartment was very hot, smelling strongly of spoiled food and dirty clothes. The worker asked Susie to show him the belt that Sammie had been whipped with, which she did. F.C. sec. 34.05(b)(1)(3)(5)(Supp. 1975).

From his observations and information, the worker assessed the situation. Due to apparent exploitation and emotional abuse of Susie, the great potential for immediate danger due to the lack of supervision of Sammie and Paul, the pattern of this type of maltreatment of the children, the possibility of the family moving, the apparent lack of adequate relative placements and the probability that the parents would not cooperate with the Department in placing the children, the worker felt that all three children were in immediate danger and that the worker had the legal responsibility to provide emergency protection for all three children.[10] The worker obtained supervisory permission to proceed with emergency removal and substitute care placement. The worker contacted the District Judge to alert him that he was taking possession of the children in an emergency. Since the court was over for the day, the Judge directed the worker to take possession of the children, place them in substitute care, and bring them to Court at 9:00 a.m. the next day for a hearing.[11] F. C. sec. 17.01(Supp. 1975), F.C. sec. 17.02 and 17.03 (1974).

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[9] See Judge Pena's article, Page D-49, for a discussion of parents' rights; page D-50, for a discussion of children's rights. Mr. Anderson's article, page A-13, discusses parents' rights; page A-14, children's rights.

The worker discussed with the children his assessment of the danger in their situations, the Judge's order for them to be placed in foster care, and that they would be going now with the worker to the office in order for him to talk with their parents about what was happening and why. The worker said that he would then probably take them to a foster home. The children put on shirts and shoes and got a favorite toy to take with them.[12]

At the office, the worker took pictures of Sammie's injuries. The worker called the mother at work and told her that child welfare had received a referral concerning the children. The worker had visited the home and found Susie responsible for babysitting with the two boys who had been left alone all day, and found Sammie with belt marks. The worker told her that he had been very concerned for the children's safety and had brought them to the office. He wanted to discuss with the parents these problems and the possibility of a temporary foster home placement for the children while the parents worked out the problems.

The mother began crying, saying she didn't know what to do. She said that the father would be furious with her for letting this happen and would beat her. The worker asked if he, rather than the mother, should call Mr. R. and set up an appointment to talk. The mother was unable to decide what to do so the worker called the father, who was verbally abusive to the worker. He refused to meet with the worker and said he was coming to the office to get the children. The worker told him that he would ask the mother to come to the office and he hoped they could talk reasonably. Due to Mr. R.'s anger and threats of physical violence, and the fact that it was after regular working hours by that time, the worker asked other workers to stay with him at the office until after the interview. He placed the children in a separate room.

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[10] See Judge Hester's article, page C-5, for a discussion of who can remove a child in an emergency; page C- 6, for a discussion of when a child can be removed in an emergency.

[11] IBID, page C-10, for a discussion of involving the court's attention.

[12] IBID, page C-9, for a discussion of how to remove a child in an emergency.

The worker checked on the foster home placements and found that all three children could be placed together. He called the foster parents and told them of the children's situations and the court hearing the next day, and arranged for them to take the children for a placement physical exam after the hearing. F. C. Sec. 34.05(c) (1974). The children had adequate clothes for the hearing but the foster parents would need to get them some clothes for school and play. The worker said that he would obtain a clothing voucher and arrange for Susie's school transfer after the hearing.

When Mr. and Mrs. R. [13] arrived at the office, Mr. R. refused to talk with the worker and insisted that the children be released to him. When the worker tried to explain that the Department and the Court did not feel it was safe at that time to return the children to the R's, that the Department was legally mandated to protect the children, and that a relative placement might be possible if the R's would discuss that with the worker, Mr. R. left the office saying that no stranger or relative can care for his kids as well as he can. He threatened to return with the police or his lawyer. Due to the late hour and the parents' uncooperativeness, the worker did not wait to see if the parents would return.

He took the children to the foster home and stayed with them until they became familiar with the home and the foster parents and were no longer afraid.

At 8 a.m. the next day, the worker called the parents to remind them of the hearing at 9. Neither parent nor counsel for them appeared at the hearing. The worker brought the children to the court and with the DA filed a petition.[14] F. C. Sec. 17.02 (1974) The worker testified in the hearing about his observations, assessments, action taken, plans and recommendations to the court.[15] F. C. Sec. 17.04 (1974) The court ordered that the Department, as represented by the B. County child welfare unit, be appointed temporary managing conservator of the children[16] and to return the children home or file a petition for a suit affecting the parent-child relationship within 10 days.[17] F. C. Sec. 17.04 (1974). F. C. Sec. 17.05(a) (Supp. 1975).

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13. See Dr. Hebeler's article, page H-3, for a discussion of adult perpetrators of child abuse and neglect.

14. See Judge Hester's article, page C-13, for a discussion of filing the petition.

15. See Judge Hester's article, page C-19, for a discussion of of the hearing.

16. See Judge Pena's article, pages D-4 and D-51, for discussions of managing conservatorship.

17. See Judge Hester's article, page C-23, for a discussion about concluding the emergency intervention.

After the hearing, the worker explained to the children that the judge had told him to leave the children in the foster home for a while. He told them his plans for their stay in foster care and for working with the parents to promote return of the children home as soon as possible. The worker explained these things also to the foster parents who took the children for medical examinations and to shop for clothes.

The worker called the mother and asked to meet with her and Mr. R. to discuss the court hearing and to begin working together. Mrs. R. felt that she could not arrange the appointment with Mr. R. The worker called Mr. R. who again refused to talk with the worker, except to demand to know the name of the person who referred the case to the Department. The worker said that information was confidential,[18] F.C. sec. 34.08(Supp. 1975), and he was sorry but he couldn't tell the father that information. Angrily, the father said that his attorney would be doing all his talking for him. He refused to give the worker the attorney's name, so that the worker could contact the attorney. The worker called the mother back and asked to meet with her alone since the father refused to meet with the worker. The mother agreed to come to the worker's office that day.

When the worker met with the mother, he explained the Department's role and legal mandate to protect children from abuse and neglect. He explained that he, his supervisor and the court had felt the children needed protection because the children had been left alone all day, and Sammie had been beaten by his father. He explained to her that the judge had placed the children in the managing conservatorship of the Department and had directed him to place the children in a foster home.

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[18] See Mr. Biel's article, pages B-11 and B-20, for discussions concerning confidentiality.

The worker asked the mother whether she agreed that the things the Department was alleging had happened to the children and that they were harmful to them. She agreed that the boys had been left along but felt that since nothing harmful had happened to them that it had not hurt them to be left alone. She would prefer to put them in day care but had been unable to find places for them. She knew that Mr. R. had whipped Sammie but denied it was a beating. Besides, she felt it was for his own good, since Sammie was uncontrollable unless you "put the belt to him." The father wanted Susie to take care of the boys and the house and have his supper ready when he got home. She had to learn to do that since the mother was working and sick with "female trouble." The mother felt Paul could take care of himself. "He never asks for anything; he'll get his own food and clothes even without being whipped or yelled at -- he's a big boy." the mother said. When the worker asked the mother whether the father ever beat her, she began to cry softly and talked about how she wasn't such a good wife and mother anymore since she's been having female trouble the last few years. The worker gave the mother some Kleenex and sat quietly til her crying subsided.

The worker asked Mrs. R. about the family history, asking in particular about Linda, the 1 1/2 year old in the first referral who had appeared to be in danger from the father's anger toward her. The mother began again to cry and said she couldn't talk about it. The worker expressed regret that the subject was so painful but she was really concerned about the potential for danger that Linda might be in. The mother avoiding looking into the worker's eyes, hemmed and hawed, yet finally said that Linda was with the maternal grandmother, Mrs. S. She said that Mr. R. had always felt that Linda was not his child. He had felt that way because the last 3 years he and Mrs. R. had had very infrequent sexual relations. Mrs. R. had started having female trouble after Paul's birth and she had not been very interested in sex. Also, Paul had been sickly as an infant and Susie had helped her a lot with him, even though he slept in the R's bedroom. Therefore, the Rs had had sexual relations very seldom because they didn't know when Paul might cry and Susie would come in to take care of him. The mother had gone to work about that time to help pay some of Paul's medical bills and the father felt the pregnancy was by someone from work. The father had never liked Linda, the mother said, and then became unable to continue talking. The worker asked if the father had ever hurt Linda, whether for instance, he had given her the black eye mentioned in the referral in A. city in March. The mother, crying, shook her head and stammered that what had happened wasn't his fault. The worker asked what had happened and the mother was too upset to continue talking. The worker said they could talk more about it when the mother could compose herself. He said that he was glad Linda wasn't at home because the combination of factors involving the father's dislike for her, her young age, the mother's letting young Susie have responsibility for the care of the children and Linda's injury made the worker believe Linda might be in physical danger if she were home. The mother's tears had subsided but she seemed preoccupied, staring into nothing and not responding to the worker's discussion. The worker made a mental note to check on Linda in the grandmother's home to consider whether she was well and protected.

The worker told the mother that he knew it had been a long and difficult interview and asked if she wanted to break for a minute, get another cup of coffee and come back to tie things together and to make plans, or whether she'd want to come back the next day. In a moment, the mother said she couldn't get off work the next day, so the worker encouraged her to stand up and move around a little while the worker got them both some more coffee.

When they continued the interview, the worker told the mother that he felt the children should not return home immediately. Sammie had been abused by overly-severe discipline and Sammie and Paul had been neglected by being left alone at too early an age. Susie had been exploited by being expected to babysit and keep the house at her age. These were parental tasks and were inappropriate role expectations for a child. The worker told the mother that he felt she did not understand the negative and dangerous effects of beatings, lack of supervision and unrealistic expectations on children. He explained that the Department worked with parents exploring every avenue possible for return home of the children. The return of the children, however, was incumbent on the increased safety of the home which meant both parents had to work with the Department and/or a counselor or other type of helping agency to recognize the mistreatment of the children and to change their expectations and discipline patterns. The worker asked the mother if she and the father would work with the Department to increase the safety of the home for the children. The mother, beginning to cry again, said she would but the father never would, so she guessed that would mean they'd never get the children back. The worker told her he would work with her in several different ways to try to engage the father in working with them or to consider what she, without the father in the home, could provide for the children.

As next steps in working together, the worker and mother planned:

1. Visitation between the parents and children within the next week at the office.

2. Regular meetings between the worker and the parents to discuss the children's progress in foster care, the parents progress in rehabilitating the home and the effects of visitation on the children.

The worker discussed the information obtained with his supervisor. They felt the abuse and neglect in the home was due to the parents not making appropriate child care arrangements for the children, the father's overly severe discipline methods and the mother's lack of intervening on behalf of the children. The father's continued uncooperativeness in accepting the Department's help or seeking help outside the Department would probably hinder the improvement of home conditions and delay return of the children. They were concerned about the relationship between Susie and the father, and the possibility of potential or actual incest. The mother's apparent withdrawal from the sexual part of the marital role, the father's increased demands for Susie to assume more of the household tasks and Susie's social isolation enforced by the father were all signs for concern. The worker would discuss with Susie whether the father had ever approached her sexually, but her loyalty to her father would probably prevent her from easily or truthfully discussing this with the worker.

At that time, the worker and supervisor decided that they would not return the children home at the end of the emergency order. They needed further info before they met with the D. A. to decide whether to request termination of the parent-child relationship.[18] The worker would begin to immediately gather this information while at the same time providing needed social services to the family.

Over the next 5 days, the worker completed the following:

1. Provided visitation between the parents and children.

2. Talked with the parents' attorney about the Department's findings, protective service role and Departmental policies about work with the family to return children home.

3. Worked with the foster parents and ascertained that the children's behavior in foster care was similar to that described before, and that Sammie's behavior in particular was difficult to handle.

4. Filed a report of the investigation with the local law enforcement agency. F. C. Sec. 34.05(e) (Supp. 1975).

5. Reviewed the children's medical exams. Susie was found to be physically well and to have begun her menses. The doctor said the foster parents had said Susie had nightmares, appeared sad all the time and was enuretic. The doctor recommended psychologicals and a urological exam. Sammie had multiple (15 or 20) fading red welts resembling belt and buckle marks on his back, buttocks and legs. There were 2 more on his scalp and neck.

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[18] See Judge Pena's article, page D-3, for a discussion of suits affecting the parent-child relationship.

He had scarring from recent and severe impetigo and from what appeared to be a belt and buckle. The doctor recommended psychological and neurological exams to determine the basis of his observed overactivity. Due to the history of abuse, the doctor recommended X-rays of all bones.[19] Paul was found to be moderately anemic and very withdrawn. The doctor recommended vitamins and a balanced diet for the anemia, and a psychological or developmental exam to determine the cause of the withdrawal.

The worker made arrangements for the children to have the recommended exams and treatment. F. C. Sec. 34.05(c) (1974). The urological exam was negative. Sammie was found to have had 3 old fractures of his legs.

6. Talked with the children about why they were in foster care, what the worker and parents were doing, and plans to return them home.

7. Completed case recording to document the investigation and work with the family, finalized the CANRIS (See page 5 for definition) report as valid abuse and neglect and completed necessary paper work for the children to receive Medicaid coverage while in foster care.[20]

8. Called the complainant and told her that the Department had investigated her referral and was continuing work with the family.

9. Interviewed the mother to discuss the worker's activities and findings, to keep the mother informed about the children, and to stay aware of the parents' response to the Department's intervention.

10. Contacted the maternal grandmother, Mrs. S., concerning Linda. Mrs. S. said that Linda had died 4 months prior of a broken neck caused by falling down the stairs in the R's apartment. She said the mother had had a nervous breakdown at that time, and still tells everyone that Linda is living with Mrs. S., although Mrs. S. felt sure that the mother knows better. The worker asked how it happened. Mrs. S. said the parents were at work and Susie was babysitting with the children after school. A telephone repairman had come to the apartment and Sammie and Linda had gotten out the door and headed for the play area downstairs. Linda fell and broke her neck, killing her instantly. The worker asked

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19. See Dr. Hebeler's article, page H-16, for a discussion of laboratory studies in detecting child abuse.

20. See Judge Pena's article, page D-44, for a discussion of preparation of court case.

> what the effect had been on Susie, the parents and the other children. The grandmother said that after they got over the initial fright, the children were perfectly normal and acted like nothing had happened. Mrs. R. had had a nervous breakdown and Mr. R. just kept drinking as usual. The worker asked Mrs. S. if she saw the children often and whether they ever appeared mistreated. She said that she didn't see them as much as she wanted because she couldn't stand alcoholic beverages, and Mr. R. drank all of the time. She had never liked her son-in-law and blamed him for Linda's death because he had made the mother go to work and bragged that Susie could do a better job with the house and children than the mother. Mrs. S. just couldn't understand why her daughter couldn't stand up to Mr. R. She would be glad to help the children but not her daughter or Mr. R. The worker thanked her for meeting with him.

The worker's and supervisor's assessment of this new case information was that it revealed the full extent of the actual potential physical and emotional danger in the home and Mrs. S.'s probable inadequacy as a relative placement. Although Linda's death had apparently been an accident, the parents neglect in not providing adequate child care had to be suspected. The pattern of chronic physical abuse of Sammie, the continuing pattern of lack of adequate supervision of the children, the father being resistant to working with the Department and the mother's lack of awareness of the danger inherent in the neglect and her passive acceptance of the father's wishes made the worker and supervisor question whether the parents had the minimal strengths with which to work toward rehabilitation of the home and reunion of the family and whether the children would be ever protected in the home. They decided to consult with the DA about petitioning for termination of the parent-child relationship.

When the worker met with the DA[21], the DA thought the Department had grounds for termination since the parents had knowingly placed the children in conditions which endangered the physical well-being of the boys and the emotional well being of all the children, F. C. Sec. 15.02 (1) (D) (1974), and the father had engaged in conduct which endangered the physical well-being of Sammie. F. C. Sec. 15.02 (1) (E) (1974). The DA suggested that the worker gather information to determine whether the parents had enrolled Susie in school as required by the Texas Education Code in A., B. or C. city. If they had not this would be another possible grounds for termination of parental rights on Susie. F. C. Sec. 15.02 (1) (J) (i) (Supp. 1975) Suggested witnesses for the hearing were the school nurse, the psychologist if the findings of the children's exams supported the plea, the worker, the police report concerning Linda's death, school records if pertinent, and the physician who examined the children.[22] The pictures of the children taken by the worker would be material evidence.[23]

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[21] See Judge Pena's article, page D-47, for a discussion of the pre-trail conference.

In discussing the petition,[24] F.C. sec. 11.08(a)(b)(c)(Supp. 1975), the worker advised the DA that he was unaware of previous court action concerning the family, however inquiry should be made to determine whether there was a court of continuing jurisdiction,[25] F.C. section 11.071 (a)(Supp. 1975). The worker asked that child support be requested by the DA.[26] F.C. sec. 14.05 (1974).

Pursuant to the filing of the suit to terminate the parent-child relationship, temporary orders[27] were issued to allow continuation of child welfare's temporary managing conservatorship pending a hearing. F.C. sec.11.11 (a)(1)(1974), F.C. sec. 17.05 (a)(Supp. 1975). In the order, the Department was appointed temporary managing conservator, F.C. sec. 11.11 (a)(1)(1974); a guardian ad litem was appointed,[28] F.C. sec. 11.10 (a)(Supp. 1975); and a hearing was set 10 days hence, F.C. sec. 11.11 (b)(1974). Arrangements were made for legal citation of the parents.[29]

The worker and DA discussed the petition with the parents and their attorney. The parents' attorney said the parents wanted their children back and wanted to cooperate with the Department, but they would contest the termination plea. He said the parents loved their children and knew now that it was dangerous to leave the children alone and that Susie should have fewer responsibilities. He said the children should be returned home immediately and that the parents would be glad to go to counseling if necessary and would put the children in day care. The worker told him it wasn't possible to return the children home until after the parents had received help, but that it appeared that the Department and the parents could mutually determine some initial problems to work on in the home, if the court did not terminate the parent-child relationship at the hearing.

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[22] See Mr. Biel's article, page B-12, for a discussion of privileged communications.

[23] See Judge Pena's article, D-46, for discussion of exhibits.

[24] See Judge Pena's article, page D-19, for a discussion of the petition.

[25] See Judge Pena's article, page D-8, for a discussion of the court of continuing jurisdiction.

[26] See Judge Pena's article, page D-58, for a discussion of child support.

[27] See Judge Pena's article, page D-26, for a discussion of the temporary order.

[28] See Judge Pena's article, page D-22, for a discussion of guardian ad litem.

[29] See Judge Pena's article, page D-21, for a discussion of citation and notice.

The worker contacted the children's guardian ad litem to discuss with her the Department's court case, plans for the children and to arrange for her to visit with the children. F. C. Sec. 11.10 (a) (Supp. 1975).

The worker contacted a counseling agency with which the Department had a contract to provide counseling services to the Department's clients. The counseling agency could immediately provide counseling services for the parents. The worker discussed the referral to the counseling agency with the mother, who said the father would not consider going to counseling unless the court said that was the only way to get the children back.

The worker contacted a psychological testing agency concerning the appointments for the children to be tested. F. C. Sec. 34.05 (c) (1974) The worker prepared a written summary of each of the children's life histories and sent these to the psychological testing agency prior to the appointments. The psychological test findings on Susie were that she had an average intelligence, was severely depressed and guilt laden about the death of Linda and the necessity for the removal of the children from the home, had some pre-occupation with sex so that the psychologist questioned the possibility of excessive sexual stimulation within the home, and felt overly responsible for the care of her younger siblings. Recommendations were for individual and/or group therapy and for the foster parents to encourage age appropriate behavior for Susie and to de-emphasize and gradually restrict Susie's parenting of her siblings and her perchant to assume responsibility for the operation of the home.

The psychologist found Sammie to be of average intelligence, highly anxious, moderately minimally brain injured and hyperactive. Sammie saw himself as unprotected by adult figures in a world which was very threatening and unnurturing, with punishment being unpredictable and over-whelming. The MBI affected his visual perception and hand-eye coordination and contributed to his anxiety. The hyperactivity was believed to result from a combination of the MBI and high anxiety. Trial medication was recommended for the hyperactivity. Very consistent and clear rules about his behavior were to be established by the foster parents with Sammie participating in decisions about what would be appropriate discipline for misbehavior. The hyperactivity was not to be seen as misbehavior, but rather uncontrollable activity. No physical discipline was to be used. Preschool was recommended to begin to alleviate the MBI learning lag.

From information supplied by the foster parents and the few developmental exam activities Paul would participate in, the psychologist assessed him to be of below average intelligence or to have been greatly under-stimulated. He had primitive basic talking, feeding, dressing and elimination skills but would do these only when by himself. When with others, he was primarily withdrawn and self-stimulating. He would relate in a very dependent manner when others reached out to him. Play therapy was recommended. The foster parents were encouraged to provide Paul with as much social stimulation and body touching as he would allow. The psychologist recommended doing with rather than for Paul to decrease the level of inappropriate dependency and to provide him with increased stimulation.

The psychologist agreed to meet monthly with the worker and foster parents to provide consultation to the foster parents in carrying out their part of the recommendations for the three children. She would also counsel individually with Susie.

The worker gathered further information from the mother concerning Susie's school history and obtained written parental permission for release of information. The worker called the schools involved for information concerning Susie's school attendance. Although the schools wouldn't release specific information on Susie's attendance over the phone or without written parental permission,[30] they said that Susie was not in violation of the attendance requirements of the Texas Education Code. The worker wrote for the information to use in further case planning.

The hearing on the temporary orders pursuant to the suit to terminate the parent-child relationship was held. Temporary managing conservatorship was continued with the Department, F. C. Sec. 14.01 (a) (1974); the parents were appointed possessory conservators,[31] F. C. Sec. 11.11 (a) (1974), and granted monthly visitation rights, visitation rights being dependent on the parents participation in counseling as recommended by the Department. The parents were ordered to pay child support; and a final hearing date was set for 6 months hence.

Following the hearing, the worker met with the parents and their attorney to discuss the Department's recommendations for counseling and conditions for return of the children to the home. The father refused to interact in the interview but apparently listened on the advice of his attorney. The worker's recommendations for counseling were as follows:

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[30] See Mr.Biel's article, page B-14, for a discussion of the Family Educational Rights and Privacy Act.

[31] See Judge Pena's article, pages D-4 and D-56, for a discussion of possessory conservatorship.

1. Parents must seek professional counseling to be initiated within 2 months of the court order, and

2. Parents must participate in professional counseling and follow goals mutually determined with the counselor, and

3. Parents must be allowed to visit with the children at least monthly in the worker's office, with the decisions for visitation at home to be made jointly by the parents, the worker and the professional counselor, and

4. The parents must show sufficient improvement through counseling in the worker's and counselor's opinions for tentative permanent planning of children to be made within six months.

Conditions for the children returning home generally would involve adequate child care plans for all three children when the parents weren't at home, the father's knowing and applying non-abusive discipline methods, and increased responsibility by the mother for protection of the children. Also, the parents would need to meet the specific conditions for the return of each child, which were to be established with the psychologist now working with the children, the worker and the DA.

The mother accepted the information from the worker about the available counseling resources. The worker arranged with the parents for visitation with the children and for regular appointments to discuss with them the children's adjustment to foster care and the parents' progress.

The worker met with the counseling agency to discuss the R's situation and gave them a written case summary. The worker requested a written summary of the counselor's diagnostic impression and goals with the family and written reports at periodic intervals of their work together.

The worker met with the foster parents to discuss the hearing and the case planning for the children. The foster parents said Susie had told them that her father made her give him the foster parents' telephone number. He had started calling, being verbally abusive if the foster parents answered. If Susie answered, he tried to get her to runaway. They were very concerned that he might try to see Susie at school or that he would make her give him the foster parents' address so that he could come get her. They were afraid of the father for their and Susie's sakes. They hated for Susie to have to leave their home but wondered if it might not be better for her to live elsewhere. The worker suggested that a group home where they dealt with this kind of situation might be a good placement for Susie. The foster parents said it was very difficult to carry out the psychologist's instructions for all the three children at the same time. It was especially difficult to help Susie be a child rather than her siblings' parent. She had to be made to participate in school activities and play with neighbor childrenrather than help with household chores and babysit with Sammie and Paul. They said that as Sammie's overactivity subsided they were being able to help him more, so they were feeling optimistic about him. It was harder to tell with Paul. He was always so quiet. The worker told them they were doing fine with the children and encouraged them to continue in their efforts.

The worker said he'd talk with the mother and the father's attorney concerning his disturbance of the foster parents' home and assured them that every effort would be made to stop the father's disruptive behavior. The worker understood the strain on the foster parents in trying to meet the needs of all three children and felt that there were probably benefits Susie could derive from the group home. The worker wanted to consider the effects of such a move on all three children before a decision was made. The worker wanted to include in this consideration the opinions of the children themselves, the foster parents, the psychologist, the worker's supervisor, the foster parents of the group home, and the family. The worker would set this consideration in motion immediately.

The worker discussed the results of the hearing with the children, only Susie seemed to understand. To help them express their concerns and feelings, the worker had the children play act being in foster care with paper dolls and draw pictures of the foster parents, their biological family and what the children were doing during the day. Separately, the worker talked with Susie about her father's calls, why he was behaving this way and how Susie could help handle the situation. Susie was very interested in this because her father was upsetting her badly. The worker also told Susie that she was still acting too much like a mother to her brothers. He explained to Susie that that was her mother's or foster mother's responsibility. Susie's responsibility was to go to school and play with other children so that she could grow up and be the kind of adult we all want to be. He told her it might be easier for her to quit mothering her brothers if she moved to another foster home where children her age lived. They talked about the activities of the group home and the kinds of parents she'd have. He assured her she could visit with her brothers at least once a week. Susie promised to think about whether she would like living in the group home.

The worker called Mrs. R. and told her about the father's behavior. The worker told Mrs. R. that the father must stop this disruption. If he did not, the worker would have to tell the court about his calls and seek legal means to protect Susie and the foster parents from this harassment. The worker also told the mother about the possibility of Susie's replacement and asked the mother to think about it and discuss it with the father. The worker wanted the parents to understand the reasons why Susie might benefit from the group home setting.

The worker set up a meeting with the foster parents, Susie's counselor, Paul's play therapist and the worker's supervisor to discuss Susie's possible placement in the group home. They felt this could be a positive plan for Susie and if properly carried out, it could be a positive environmental change for Sammie and Paul.

At their next appointment, Mrs. R. told the worker that the father denied having called the foster parents but she knew he was lying. The worker said that Mr. R. had stopped calling the foster home and the worker wanted the mother to thank him for that. The worker asked if the parents had any comments on Susie's proposed group home placement. The mother said the father had been opposed to the plan. He had suggested his sister, Mrs. T., who lives in D. city for a placement for Susie if the Department needed a home for her. The mother said that Mrs. T. had met Susie when she was about six years old and had fallen in love with her and mentioned her in her letters. His sister had had four boys and had always wanted a girl. The worker said he hadn't meant to ask the family to find a home for Susie, but he did appreciate the father's giving him the name of a possible relative placement for Susie. What the worker thought Susie needed at this time was a place to live where she could unlearn the bad habits of trying to be a parent to her brothers and learn how to relax and be herself. But the relative's home might be the ideal permanent placement after the temporary therapeutic placement.

Since the concensus of those working with Susie was that the placement in the group home would be appropriate for her, the worker made those arrangements. The worker took Susie to meet with the group home parents and residents for several pre-placement visits prior to the actual placement. Susie liked the parents and most of the children. She told the worker she thought she would like to live there. In November she moved in, understanding that the placement would be temporary. While she initially missed her brothers very much, she soon became involved in the group home. She particularly liked the father who was a kind and gentle man who listened to her tales of school. Susie had some difficulty at first adjusting to the other children who were mostly older than she was. However, she soon made a friend and after that her adjustment was swift and the placement was successful.

The worker regularly met with the parents and their counselor. Mr. and Mrs. R. were attending marital counseling once a week, and within the last month had also taken a parenting education course. Their counselor's opinion was that greater progress had been made by Mrs. R. who was beginning to assert herself in her relationship with Mr. R., her mother, the worker and the children. She was being more sensitive to the children's needs and was helping the father when he became angry to "take a walk around the block to cool off" before he took it out on anyone. Mr. R. was still the dominating figure in the home. Although he would talk with the worker now, he was comfortable only when the interview was held in the home. He related best to Paul at this time, saying that he was the most warm and obedient of the children now. The father said that Sammie still seemed like a brat. The counselor questioned the return of

Sammie to the home because of Mr. R's continuing difficulty with what he felt was Sammie's willful rebellion. The father saw Susie as distant and blamed the group home for the change. He continued to want the worker to study his sister's home as a placement for Susie til she could return home. The counselor had continuing concerns about the parent's ability to control their inappropriate role expectations of Susie. The counselor also thought Susie's return home at the hearing would probably undo the progress the R's had made on their marital problems.

The worker met regularly with the foster parents and the children. Susie and Paul had shown the greatest improvement in foster care. Susie had recently been very angry about a visit with her parents which had caused her to miss a party. She was definitely adjusting her relationships, being more interested in age appropriate activities. Paul had become much more outgoing, and even had begun to cry when experiencing separation from his biological parents. Sammie on the other hand had great resistance to visiting with his parents, acting up very badly on the way to the visit, during the visit and for a couple of days after the visit.

Since the final hearing on the suit to terminate the parent-child relationship was two months away, the worker met with his supervisor to discuss the court case. The worker and supervisor decided to make individualized recommendations for each of the children. Although the same recommendations are often made for all the children in a family, the effect on each of the children in this family of the combination of (1) the children's individual characteristics and needs, (2) the parents' strengths and weaknesses, and (3) the parents' stated preferences for planning for the children, were so different that different recommendations for each child was apparent.

The worker and supervisor decided to recommend that parental rights be terminated on Sammie, with adoption as the permanent placement plan, since neither his behavior while with the parents or the father's understanding of him were sufficiently corrected for Sammie to be safe in the home. The parents would probably contest this because of the father's need to control the destinies of the family members. The worker and supervisor decided to recommend an extension of time in which to consider returning Paul home. At this time, he appeared to be receiving sufficient emotional gratification from the parents, thus eliminating the emotional neglect. The worker and supervisor's concern was how the parents would handle discipline of Paul later in life. They would recommend increased visitation and for longer periods of time while Paul and the parents continued in counseling to see if the relationships continued to improve. The worker and supervisor were undecided about recommendations for Susie. They did not feel she should be returned home at this time because of the counselor's recommendations. On the other hand, they felt they did not have sufficient grounds for termination.

The worker met with the DA to discuss the Department's thinking. The DA said that the parent's cooperation in following the agreed order, paying regular child support and regular visiting with the children would speak well for them in court. The parent's counselor questioning of return of Susie and Sammie might result in another delay in the decision. On the other hand, the father, under cross examination about his visitation periods with Sammie, might reveal that he still had the same basic tendencies toward overly severe or inappropriate discipline since this was the area where the counselor felt the father had changed least. Despite the mother's increased assertiveness in saying she'd leave the father if he hurt Sammie again, one episode of overly severe disciplining of Sammie could result in permanent harm or death. Concerning Susie, the DA felt that without parental cooperation, they didn't have enough evidence for termination. The DA encouraged the worker to obtain more definitive evidence on Susie if possible.

Although Susie had denied any sexual abuse when the worker had discussed it with her previously, the worker and supervisor felt sure that sexual abuse was at least a potential reality in the type of relationship Mr. R. had been fostering with Susie. The worker had previously discussed it with the mother who denied any knowledge of this. The worker decided to talk with the mother again, without the father, to see whether the mother could protect Susie were she to return home. The discussion between the worker and the mother revealed that the mother had been involved incestuously with her father. She never wanted that to happen to Susie, but Susie hadn't confided in her. Rather, it had been almost that Susie didn't want her there and had turned the father against Mrs. R., which Mrs. R didn't want to happen again now that she and Mr. R. were getting along better. She didn't know what she'd do if Susie returned home. The worker asked Mrs. R. if she would testify to this but she didn't feel she could. The only other way the worker knew to protect Susie would be through a relative placement to which the father was already amenable. The mother, visibly relieved, felt this would be a good plan.

The worker contacted the relatives concerning a placement for Susie. They were very eager to be studied for the placement but insisted that they would take Susie only through adoption. The worker discussed this with the mother who became very discouraged, saying that her husband would never agree to it. The worker encouraged her to talk to Mr. R. to see if he could consider placement with the relatives through adoption since that seemed to be the best plan for Susie, that way they could maintain some contact with her and otherwise they might lose their marriage. Also, if placement could be made prior to the hearing and proved to be a good one that the father might feel he had some part in planning for Susie. If rights were terminated, he would have no part in planning for her at all.

The mother contacted the worker the next day saying the father would allow the adoption. They had had a long talk and the father seemed to realize a little that if Susie were to return home now this would hurt their marriage. The worker suggested they contact their attorney and discuss with him the best legal means to do this.

Since time was getting short, the worker called the child welfare agency in the relative's home town to see if a study could be done immediately. The agency said the T's had already contacted them and they had begun the study. The study was completed rapidly, the family approved for placement, and Susie began visiting in the home. She was the only girl and the youngest child in the family. She said she wanted to live there because Mrs. T. had been so nice to her and she had her own room and a record player. She didn't want her father to think, however, that she didn't love him. She just felt that she could date more and do things with kids her own age, whereas at home she might start trying to be a mother again.

The parent's attorney contacted the DA saying that the parents had signed an affidavit of relinquishment,[31] F.C. sec. 15.03(a) (1974) on Susie, naming the Department as managing conservator, to be presented in court. The DA made the necessary arrangements to amend the petition.

The worker met with the parents to discuss the Department's planning for Sammie and Paul. They were opposed to termination on Sammie but were very pleased about the plans for Paul. They would be at the final hearing.

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[31] Section 15.03 of the Texas Family Code provides for an affidavit of relinquishment of parental rights which has been duly executed to stand in lieu of a judicial action to terminate parent rights. Departmental policy is to seek from the court an order terminating the parent-child relationship based on the affidavit of relinquishment. The judicial termination of the parent-child relationship is a documentation that the relinquishing parents understand the finality of their act and is a stronger base upon which to make permanent plans for the child. See Judge Pena's article page D-52, concerning affidavits of relinquishment.

In March, the final hearing on the suit to terminate the parent-child relationship was held. The Department submitted a social study on its work with the family.[32] F.C. sec. 11.12 (a)(1974). The court found that the petiotioner's allegations on all three children to be proven. The court found that the affidavit of relinquishment was voluntarily executed, that termination was in Susie's best interest,[33] F.C. sec. 15.02 (2)(1974), F.C. sec.15.02 (1)(k)(Supp.1975), and that Child Welfare be appointed manager conservator of Susie. The court was advised of the Department's plans for continued placement of Susie with the relative and gave its approval. The court found that termination was in Sammie's best interest. Careful cross examination of the mother and father and of Sammie's psychologist revealed the continued potential for physical abuse due to Sammie's continued overactivity precipitated by anxiety in being with his parents, the father's continued perception of Sammie's problems being due to "badness" and the mother's feelings of ineffectiveness in preventing the father's beatings of Sammie. The court found that termination on Paul was not in his best interest. The parents were appointed as managing conservator and the Department was appointed as possessory conservator. The court ordered that Paul be returned home within a week. The Department was ordered to provide supervision in the home, with access to the home to be allowed by the parents at such time as deemed necessary by the Department to provide for protection of Paul. At the conclusion of three months, the Department, was to file a report to the court about Paul's adjustment and giving recommendations for the Department's continued involvement. The DA on behalf of the worker protested replacement at this time but the court ruled that the parents and child should be reunited as soon as possible after alleviation of the neglect.

The worker told the children what had happened in the hearing. He then interpreted the results t othe foster parents, the relatives and the counselors. The worker made arrangements for a worker in the city where the T's lived to provide supervision for six months after the placement and to send periodic reports on her adjustment. The worker referred Sammie to the Department's adoption placement resources to provide him with a permanent family.

The worker worked with Paul, the biological parents and the psychologist to arrange for replacement in the home. The parents arranged for day care and took Paul to the day care center the day before he started going in order to familiarize himself with the center. The biological parents met with the foster parents and Paul's play therapist so that the biological parents could familiarize themselves with Paul's routine and the methods to use to help him continue to be more responsibe and independent.

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[32] See Judge Pena's article, page D-27, for a discussion of the social study.

[33] See Judge Pena's article, page D-59, for a discussion on the best interest of the child. Also, Mr. Anderson's article, page A-14.

The parents took Paul shopping and let him pick out some clothes and toys. The worker planned with the family to supervise Paul's adjustment in the home by weekly visits the first month, biweekly visits the second month and monthly or more frequent as needed, for three months after the time the Department no longer had conservatorship.

In June, the worker filed a report with the court concerning Paul's adjustment and recommending closing of the case. The parents made a motion[33] for dismissal of the Department's possessory conservatorship on Paul, which was granted. The Department furnished the parent's attorney with a consent to the dismissal, which was attached to the petition.

After Susie had been in the T's home for six months and had made an excellent adjustment, the T's attorney petitioned for adoption. The worker supplied the attorney with the Department's consent to the adoption as Susie's managing conservator. F.C. sec. 16.05 (a)(1974). Susie's consent to the adoption. F.C. sec 16.05 (c) (1974). The attorney sent a copy of the adoption decree to the worker who updated case dictation and closed the Department's case on Susie.

In August Sammie was placed in an adoptive home. Between March and August, without the stresses placed upon him by his natural family, he had made tremendous improvement. There were only occasional traces of hyperactivity and he seemed to be developing into a happy little boy. After the first week in his adoptive placement he regressed into his previous behavior. But his new parents had expected this. They were kind, understanding and patient people. He quickly overcame his anxieties and settled in to enjoy his loving new home, with only a few setbacks, which could have been expected. The last heard about Sammie was that he was the second base man on his little league ball team and was planning to spend a week at Boy Scout Camp.

The worker supervised Paul in his home until September. The parents and Paul had shown remarkable progress in relating appropriately. Leaving information on how the Department could be reached if the parents had further troubles, the worker updated case dictation and closed the Department's case on the Rs.

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[33] See Judge Pena's article, page D-63, for a discussion of modification of orders.

RECOGNIZING CHILD ABUSE

Identification
Initial Plan
Management Problems

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September 1976

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RECOGNIZING CHILD ABUSE

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RECOGNIZING CHILD ABUSE

Dr. Joan R. Hebeler

I. SCOPE OF ARTICLE.

The management of children and families enmeshed in abuse and neglect situations is complex and requires the involvement of many individuals and agencies.

General guidelines for identification, reporting, and management are provided in Title 2 Chapter 34 of the Texas Family Code but specific information concerning what constitutes abuse or neglect is not provided. This article summarizes the historical data and physical findings which are generally accepted as indicative of abuse or neglect in the current literature and in the author's 14 years of clinical experience. Historical data are included because they contribute to the evaluation of the child and family although it is recognized that historical data are often discounted as hearsay evidence.

The process for initiating a report of abuse and neglect and the initial management steps are described.

Finally there are serious problems in compliance with the family code and the management of abuse and neglect cases. The difficulties encountered in management of cases are described. These illustrations are taken from encounters with 350 families seen directly or in consultation from April 1974 through August 1976. The problems are presented for resolution.

II. INTRODUCTION.

A. STATISTICS.

Statistics concerning abuse and neglect problems are difficult to obtain because documentation and definitions vary. The approximate incidence is 10 per 1000 live births. Using 1970 census figures and formulae developed by Gil and modified by Light a "best estimate" number of persons under eighteen who are maltreated in Texas should be about 40,220 the "upper limit" number should be about 105,572. The actual number of report number for 1975 was 34,384 with 10,708 confirmed cases. There has been a sharp increase in reports from 1000 in 1971 and 4,000 in 1973 to 34,384 in 1975 which can be explained by a Department of Public Welfare state-wide educational program concerning child abuse and the mandatory reporting law. Child abuse and neglect is a common occurence and accounts for increasing numbers of hospitalizations and 10 percent of emergency room services for children under 5 years. It is more common than malignancies and birth defects in children and has become the second most common cause of death for young children.

There is a recurrence rate of 50 percent if a child is returned without changes being made in the family. Permanent brain damage and other handicaps result in approximately one fourth of the cases. This is not a significant change from the figures published by Kempe in 1962 in the nation wide survey of hospitals and district attorneys which established the diagnosis of Battered Child Syndrome.

B. THE VICTIM.

The victim of physical abuse is usually a young infant or preschool child. Sexual abuse most often involves a school aged or adolescent girl. Neglect and emotional abuse are seen in all age groups. Approximately two thirds of physically abused children are under 3 years of age and the remaining third are over 3 years. Physical (including sexual) and emotional abuse, and neglect can exist as single entities but often occur in combination. The presence of a broken arm does not exclude the presence of neglect or emotional abuse. Children who are suspected of being abused or neglected should have physical and psychological examinations as required by law.

One child may be selected as a scape goat but several or all children may be endangered in a given household and should be examined for their protection as required by law.

1. Examples.

    a. Family (A).

    One three year old child had 26 fractures, brain damage, was removed from the household and now resides in a state school for the retarded; a second child received burns to the abdomen in the shape of an iron and was removed; a third child was brought to the emergency room dead of a ruptured stomach with evidence of prolonged starvation. This indicated sequential abuse of children in a household.

    b. Family (B).

    The first child had evidence of old fractures, malnutrition, and deprivation. The third child showed evidence of malnutrition and deprivation. The second and fourth child showed no abnormalities but were considered to be a risk.

C. THE ADULT.

Adults who abuse and neglect children are found in all levels of society. Reporting patterns usually reflect the makeup of the population served. The destructive effect of poverty and deprivation on adults cannot be denied but abuse and neglect problems are not limited to the impoverished or to individual minority groups. Incidents which occur in powerful families are reported less frequently and are difficult to manage.

Mothers are most often involved in abuse of young childdren as they are often the only caretaker. Fathers are most frequently involved in sexual abuse of their daughter.

Most abuse is by the parent (95%). One parent is active but the other supports the abuse and often participates in a passive fashion. This is important as one parent protests any knowledge of what could have happened and may see no reason for participating in family treatment.

1. Example.

    a. Family (C).

    The mother of a threee year old child who was sexually abused by her father protested any knowledge of what happened. Historical data showed that she had permitted multiple opportunities for the incident to occur, berated her husband's sexuality, tolerated his unusual practices, delayed bringing the injured child for care, and then asked the husband to take the child in for treatment. When the child was returned to her care - she arranged for the child to visit with the father but would not participate in family treatment.

Most parents (80-90%) who abuse their children are not insane or criminal but are stressed individuals who respond to help. However, the fact that 10-20% are psychopathic or sociopathic should be kept in mind as children living in those households are at severe risk. Each abusing parent and family require an individual assessment because correct evaluations provide a sound basis for a treatment plan.

Occasionally siblings, relatives, teachers, and other adults known to the child abuse children. An unknown assailant is seldom the abuser although newspapers primarily report these incidents.

D. THE ABUSIVE EPISODES OCCURING WITHIN FAMILIES (90% OF ABUSE).

A single episode of abuse generally results from the interaction between a child who is viewed as or is difficult to manage, a family or parent with strong potential for abuse and a crisis which precipitates the event. Sexual abuse has the same characteristics.

Multiple episodes of physical abuse and emotional abuse have many of the characteristics mentioned above without a clearly defined single crisis event. Emotionally abusing families have significant emotional distrubances in one or several family members. Parents in neglectful families are more likely to be depressed, totally interested in their own needs or significantly retarded and incapable of providing care.

Impoverished families may be providing the best care available within their means and great care must be taken in labeling a situation as neglect. The whole family is often depressed, deprived, and disorganized. Removal of one child for a short period and return without providing the family with direct support is wasted effort.

1. Examples.

a. Family (D), Abuse Single Episode.

The mother, age 19, called for assistance stating that she had hit her 6 week old baby and was afraid to stay alone with her.

(1) Family factors. The mother was abused as a child and spent time in shelters and treatment facilities until age 18. She married someone in direct opposition to her parents wishes. The mother had no friends and relied on her husband for everything. She had no experience taking care of children. The mother had a persistent bladder infection which required treatment.

The husband had a supportive family but he ran away at the age of 16. He had a drinking problem.

(2) Child factors. He had a blood stream infection in the nursery, multiple illnesses, and cried a lot.

(3) Crisis. The telephone was disconnected because a friend charged 200 dollars of long distance calls, the car broke down, the father quit his job because of pressures, and a move was to take place in 2 weeks.

(4) Precipitating event. The parents had a fight and the father stormed off to work and the air conditioning broke down.

b. Family (E), Neglect And Chronic Deprivation.

Six children were reported as neglected. A visit to the household showed a condemned house with no water supply except a neighbors tap several blocks away, stacks of dirty clothing, no source of light or heat, a sick father, and a mother with a new infant.

The children's past school records were reviewed and showed that they had attended regularly.

(1) Precipitating event. The father became ill and was unable to work.

E. TYPES OF ABUSE AND NEGLECT.

1. Physical Abuse.

Physical abuse is the nonaccidental injury of a child. This may be a single episode or occur repeatedly.

2. Physical Neglect.

Physical neglect includes failure to provide medical care, appropriate clothes, safe supervision, and housing.

3. Sexual Abuse.

Sexual abuse includes any sexual activity with a child. It becomes difficult to define as the child approaches adulthood.

Sexual abuse can be assaultive and produce physical injury and severe emotional upset for a boy or girl, or non-assaultive abuse which may result in little physical injury and less emotional stress for the child. The violence of the attack is the feature which disturbs the child. Fondling or other non-assaultive forms of sexual abuse may produce little effect on a child which is at great variance with the reactions of adults dealing with abusive situations.

Assaultive abuse is less frequent than non-assaultive abuse. In the 2 parent family the father is most often the abuser, but as with other types of physical abuse, both parents are involved.

4. Emotional or Psychosocial Abuse and Neglect.

Emotional or psychosocial abuse and neglect are extremely hard to define and manage. Court approved assistance can seldom be given to a family as the effects of emotional abuse cannot be seen as dramatically as bruises and lacerations. However, several specific effects on a child's behavior and growth have been documented and will be described. An additional factor which adds to the difficulty of documenting emotional abuse is that there are great cultural variations concerning expectations for a child. What constitutes emotional abuse for one group may be completely acceptable to another.

To date psychosocial (emotional or maternal) deprivation in infants has been acknowledged by the courts only when evidence documented improved an infant's growth and development on several hospitalizations. In older children only blatant repeated episodes of emotional trauma have been accepted as confirming the presence of emotional abuse.

III. IDENTIFICATION OF ABUSE AND NEGLECT.

A. General.

The family code states that any person who has reason to suspect that a child is being or may be abused or neglected shall report it in a non-accusatory fashion. The content of the report varies with the individual reporting abuse. A physician's report may have a great deal of confirmatory data but in the final analysis carries no more weight than the concerned words of a neighbor. As a matter of fact, most reports come from non-professionals. The usual conclusion reached from this is that physicians never report abuse. The real significance is that this group of children often have not received medical care. When they are examined they are found to have serious old and new injuries, lack of basic immunizations, or malnutrition. It is reasonable to expect that most reports should come from near the child's home.

1. General Guidelines.

The following guidelines can be used and extended appropriately by trained professionals.

a. Consider the fact that child abuse and neglect exists.

b. Document the reasons for suspecting incidents of abuse or neglect whether this consists of historical information from the child or others, visible marks, or unusual behavior of the child, or unusual happenings in a household.

(1) Examples.

(a) Family (F). A landlord heard prolonged crying from an apartment and received no answer to his attempts to call or contact the tenant. Investigation showed a child locked in a closet during a parent's absence for safety reasons.

(b) Family (G). A teacher noticed that a 10 year old girl would not sit at her desk as she usually did but rather preferred to lean far to one side and move very little. She was taken to the school nurse because she complained of pain on her bottom. She was found to have bruises from her waist to her upper legs and bruises on her lower abdomen as well. These were the result of a spanking with a two by four.

(c) Family (H). A nine year old boy was having problems with school work and needed evaluation. A school aide went to pick him up at 7:30 A.M. and found him alone, responsible for his meals and care. His mother had been in the hospital for several days and was supervising him by telephone from there.

c. Report your concern for the child and family to the county child welfare unit or call the statewide hotline. Their responsibilities are to investigate the situation, have the child and other children examined, provide for their protection if it is necessary, and assist the family to get help as needed.

d. Maintain a helpful attitude toward the family.

e. Continue to provide services to the child and family as appropriate for the situation. For example, a physician should continue to provide medical care, and day care nursery teachers continue the usual teaching and care responsibilities, and a mental health worker continues counselling.

B. HEALTH PROFESSIONALS.

1. Physicians.

The following data are appropriate for use whether the physician is initiating a report or examining a child who has been reported. The child generally does not complain so the physician carries the responsibility for suspecting and making the diagnosis using the following historical data, examination findings, and laboratory findings.

a. History from parents suggesting abuse.

(1) Any unexplained injury in a young child.

(a) Family (I). A 6 week old infant had a swollen, tender, upper leg. This was found to be a spiral fracture on X-ray (one resulting from a twisting injury). This is a common injury for a toddler but cannot be explained as an accidental injury in an infant of this age who cannot walk.

(2) There is variation in the histories obtained from each parent, variation in explanation

given for the injury, and dates and causes change. The injury is not compatible with the history given and is developmentally impossible for a child.

(a) Family (J). A one month old infant was brought in because of irritability and pain. She was found to have skull, rib (old and new), both arms, and 1 leg fractured. Further histories given to a worker were that she had fallen off of a skate board, and that she had awakened crying from a nap.

(b) Family (K). A three year old was brought in because he fell backward into a tree the day before. He was found to have a ½ cm. circular burn on the forearm (approximating a cigarette burn), hair missing in a pattern seen as a result of yanking (absent hair interspersed with normal hairs and no evidence of inflammation), 20 linear bruises over his right upper leg, swollen ankles (which disappeared in 1 day and compatible with the swelling resulting from restraints), and linear marks at the corner of his mouth.

(3) A history of previous injuries and visits to multiple hospitals or physicians. This is often difficult to obtain.

(a) Family (L). A three year old boy was brought in because he fell off of a hobby horse 2 days ago. He had a cast on his right arm which was reported to have been the result of falling off of a porch 2 weeks earlier in another state. Examination showed bruising of the scrotum compatible with a twisting or squeezing injury, and a tender left arm. A complete bone survey by X-ray was obtained and showed a healing fracture on the right arm and a fresh fracture on the left.

(4) A history of self-injury by the child.

(a) A 4 week old infant rolled under the mattress and fractured his ribs.

(5) Blame is placed on a babysitter or another

child (this is occasionaly true).

(a) Family (M). A 7 month old boy was seen for fever and found to have 6 fractured ribs, pneumonia, and a broken leg. When the parents were asked about the injuries the child's 2 year old brother was blamed for dropping an evaporated milk can on him.

(6) There is delay in seeking medical care. (Family K and L).

(7) There may be a history of frequent falls, easy bruising, or bizarre symptoms which do not fit known medical problems.

(8) The family expects the child to behave in a way which is not possible for age and attributes mature qualities to him which are not appropriate.

(a) An 8 month old is expected to understand verbal commands and soiling or wetting are considered intentional.

(b) The parent of a 4 week old may feel that the baby does not like her.

(9) The mother may have had many illnesses during pregnancy or delivery.

(10) The infant is expected to fill a need for the parent. The commonest example is the parent who shares adult problems like finance and divorce with young children. The child is expected to take care of the parent, who may flair explosively when the child demands attention by crying.

(11) Significant developmental delays may be identified.

(12) Immunizations are often incomplete.

(13) The child is described as showing poor growth and development. Unusual eating and drinking patterns may be described in emotionally deprived children. These include taking food from a garbage can and disturbed sleep patterns.

(14) Several high risk factors in the parents history may be helpful in making the diagnosis and should be explored.

i The parents have a history of frequent beatings, deprivation, or no parent model to teach them about parenting.

ii There is a past history of serious mental illness or encounters with the law.

iii Parents may give a history of abuse or inadequately explained deaths of their children or in the extended family.

iv One or both parents may exhibit violent sudden temper outbursts or impulsive behavior like quitting jobs to spite the boss.

v Serious marital discord or chaotic life style.

vi Families are isolated from contacts with people and have no friends or social activities. They often do not have a telephone or an unlisted number and a dysfunctional car.

vii Many families have inappropriate rigid expectations and standards for children.

  (i) Family (N). A 1 month old was treated for bruises of the back, legs, face, and a laceration of the lip. The family felt they needed to keep him from being evil in accordance with their interpretation of their religion which was at variance with the practice of most other church members.

viii Harsh or unusual punishment is used.

  (i) Family (O). A 12 year old boy had 410 linear bruises on his back and arms and loop marks across the face and behind the ear for failure to complete homework.

  (ii) Family (P). A school aged boy was brought in by his parent because of a tender swollen temple. He had been punished at school by requiring him to box with another boy in the bathroom and fallen against the tile striking his face and ear.

ix There may be a history of the child being unwanted or seen as unrewarding because of illness or behavior. This is not always true as most children are wanted and in fact desperately needed.

b. History from the child.

(1) A child over the age of 3 should be interviewed in privacy. If an abuser is named, this is usually true. This may be more difficult to evaluate in the school age and adolescent child particulary concerning sexual abuse.

(2) The child should be approached in a non-threating way and asked why (s)he is being examined. Usually the answers given are direct and often describe what occured. It is important that the child's frank responses be accepted calmly, as, if the adult becomes angry or embarassed the child may feel responsible. Sexual abuse confronts a strong taboo for the adult who reacts with anger and may become physically ill. This reaction interferes with appropriate evaluation of the child and must be controlled.

(3) Protect the child from interrogation and the use of lie detector tests.

(4) The child generally is familiar with one life style and wants to go home in spite of severe injuries.

(5) Maintain a supportive friendly attitude toward the child. The strained and worried faces of adults often convey a frightening message to the child. Nonverbal communication is of great importance to children.

(6) Children may deny an initial history of abuse as they try to adapt to and integrate the experience.

c. Physical findings compatible with abuse.

(1) A physical examination can demonstrate the following.

(a) The child may have a fixed or frozen stare or lie very still while surveying the surroundings slowly with his eyes.

(b) Finding injuries on multiple body surfaces suggest abuse. The only kinds of accidents which produce this type of injury are falls down stairs or auto accidents,

  i Family (Q). An 8 month old was admitted for a fractured leg. He also had two bruises on his left cheek, a laceration on the forehead, and bruises over the buttocks.

(c) Skin and subcutaneos tissue findings.

  i Severe cradle cap, old diaper rash with evidence of pigment changes and scarring, filth, or old infected lesions.

  ii Bruises and marks compatible with non-accidental injury.

    (i) Finger marks.

    (ii) Finding the outline of a hand on a face from a slap.

    (iii) Human bite marks (note the diameter of the arch because child bites are not infrequent but are small).

    (iv) Rectangular, linear, or round marks resembling the shape of blunt instruments.

    (v) Marks from looped cords or wires.

    (vi) Choke marks on the neck.

    (vii) Circumferential tie marks on ankles and wrists.

    (viii) Bruises in different stages of resolution.

(d) Burns.

  i. Round burns (cigarette) are common on hands, soles, and buttocks. Care must be given to differentiate from bullous impetigo.

ii Unusual burns or those with an inadequate explanation.

iii Dunking burns resulting from placement of the child's bottom in scalding water.

iv Forcible immersion resulting in burn of a hand or foot.

(e) Eyes.

Hemorrhages into the anterior chamber, dislocated lens, subconjunctival hemorrhages, or detached retinal are seen. Retinal hemorrhages accompany subdural hematomas.

(f) Ears.

Cauliflower ears or ruptured ear drums suggest abuse.

(g) Face.

Black eyes, displaced nasal cartilage, blood from the nose, or facial bone fractures.

(h) Mouth.

Lacerated frenulum of the upper lip or tongue are associated with forceful feeding, loose or missing teeth result from blows, non-accidental burns of the lips and tongue.

(i) Chest.

Ribs may be deformed secondary to fractures, there may be blood in the chest or air under the skin from a punctured lung.

(j) Abdomen.

Severe intra-abdominal injuries can exist without significant external bruising. The child may have nausea and appear ill with evidence of peritoneal irritation. Injuries include a perforated viscus, ruptured liver, spleen, kidney, or pancreas, hematoma, or mesenteric tears.

i Family (R). An 11 month old girl was brought in because she was vomiting and looked sick. She became extremely ill and had increasing distension of the abdomen. At surgery she was found to have 3 perforations of the colon and evidence of recent and old hematomas in the abdomen. After surgery the only history of trauma obtained was a fall against a coffee table.

(k) Central nervous system.

Lower motor neuron paralysis can result from spinal cord injuries or upper motor neuron paralysis can result from intracranial injury. Unexplained coma and seizures can be the result of injury or drugs given to a child.

(l) Head.

Vigorous hair pulling results in cephalhematomas. Subdural hematomas can occur without skull fractures and are the result of shaking an infant which ruptures the bridging veins Increased intracranial pressure can result from direct trauma.

(m) Skeletal system.

Old and new fractures can be found any where and are suggested by tenderness, swelling, limited motion, and deformities.

(n) Genitals.

Any laceration, bruise, or injury which cannot be explained by an accident like a straddle injury should suggest sexual abuse. The genitalia should be examined carefully for injury. A non-assaultive pelvic examination by a skilled examiner is often required for evaluation of girls. Provide adequate sedation or anesthesia to allow a careful examination if the child is fearful because internal injuries can be missed if an exam is not done. If the abuse occured within the past 12 hours samples should be collected as for rape, see appendix (1).

(o) Anus (boys and girls).

The anal area should be inspected for tears or infected lesions.

d. Behavior observed in abusing parents.

Abusive families often show lack of concern about the injuries and ask few questions about diagnosis and treatment plan. They may express annoyance at the child for having the injury. They may disappear and visit infrequently after the admission. They may refuse admission in spite of the child's severe injuries or leave the hospital against medical advice.

e. Laboratory studies.

X-rays of all bones should be obtained when abuse is suspected. The most common findings are injuries near the epiphysis and adjacent metaphysis, and exagerated periosteal reaction. There are often injuries in multiple bones and they exhibit different stages of healing. Skull fractures or separated sutures can be seen. At this point the most common fractures in abuse are common fractures. The classic multiple fractures in various stages of healing is now known to represent chronic repeated abuse.

2. NURSES.

See section 1. Public health nurses in Family Planning, Obstetrical, Child Health settings can be in an excellent position to identify potentially abusive families and provide them with non-threatening assistance before abuse occurs. Obstetrical and pediatric nurses are also in a position to identify and assist families before abuse occurs.

Nurses are often reluctant to report abusive situations because of the effect this might produce on the nurse patient relationship. The goals of reporting are to protect the child and help the adults. Most abusive families are relieved to know that their problems have been identified. They respond to persons who can work with them "in spite of" what happened.

Kempe and others suggest the best preventive for abuse is a helpful health visitor in a home with new infants to assist parents before the ultimate family-faliure-abuse occurs.

3. Pharmacists.

See section I. Pharmacists are in a postion to identify children whose parents over medicate them, give them tranquilizers or sedatives prescribed for adults, or seek help for treatment of repeated injuries or infections.

4. Dentists.

See section I. Dentists can identify mouth lesions and loosened or missing teeth and associated facial bruising or other injuries. The discrepancy between the explanation and what is found is useful in the diagnosis.

C. SCHOOLS.

See section I. A policy in accordance with the T.E.A. directives and the law to report abuse should be generated by school districts. This is helpful to clarify what channels and procedures are to be followed. However, every individual has an obligation to report abuse and neglect. A supervisor's decision does not overrule a teacher's opinion.

1. Signs suggestive of abuse in school aged children.

   a. Abnormal behavior with hyper or hypoactivity.

   b. Refusal to suit out for gym or wearing long sleeves in hot weather.

   c. Injuries particularly about the face for which the child gives a vague history.

   d. Repeated and chronic evidence of physical neglect including clothing, health, and cleanliness.

   e. Children who do not gain weight appropriately.

   f. The child who comes early and stays late and seems to have no one taking care of him.

   g. The child with obvious discomfort of pain should be examined by the school nurse and referred for care as appropriate.

   H. The child who complains of abuse.

   I. Multiple absences.

D. MENTAL HEALTH WORKERS.

See section I. Mental health workers may have serious problems dealing with abuse that their adult clients have described to them. However, the law requires reporting and the goal is to provide protection for the child and provide assistance to the family.

E. POLICE.

See section I. The information concerning the history of abuse from parents and children related to the physical findings on the child are appropriate for review. Police are most often called into the worst cases and into the middle of a totally disrupted household which precipitates angry feelings. The very nature of the job makes it difficult to relate to the abusive family in any way but an accusatory fashion. However, the end point of successful management is not putting the parents in jail but attempting to rehabilitate them without sacrificing the child in the process. This orientation toward prosecuting may be so strong that the protection or treatment of the child may be overlooked. This is particularly true in cases of sexual abuse.

1. Family (R).

A 9 year old girl described fondling and then sexual activities of an elderly man with several girls in the area. The parent called the police who incarcerated the man. They did not report the child to protective services. The parent was informed that a physical examination and data were not essential to the report. The physician reported the sexual abuse to Child Welfare.

F. PROTECTIVE SERVICE WORKERS.

Review of all sections is appropriate. The main responsibilities of the worker are prompt response to reports, thorough, professional, non-judgemental, evaluation of the family following the guidelines of the law. The child suspected of being abused or neglected and all children in the household should be taken for examinations as soon as possible. The parents and other caretakers should receive thorough evaluations to identify the kind of problems they have. Children and parents have the right to be examined by professionals and every effort should be made to secure these examinations and involve them in an appropriate treatment program.

1. Family (S).

3 children were neglected and appeared retarded. The mother seeemed agreeable but would not follow directions. After several months of failure to respond, the parents were evaluated. The mother was found to be significantly retarded. The father could not read and had significant psychiatric problems. The evaluation helped delineate a plan of management at variance from the initial one.

IV. INITIAL MANAGEMENT.

A. PHYSICIAN.

1. Suspect the diagnosis.
2. Identify the problem using historical physical examination and laboratory data.
3. Establish and maintain rapport with the parents.
4. Admit the child or treat under close supervision by the protective service agency at home or in a place of safety.
5. Manage the medical problems.
6. Document the findings using drawings or photographs.
7. Report by telephone to the child welfare unit or use the state-wide hotline, 1-800-292-500.
8. Send a written report within 5 days describing the reasons for suspecting abuse or neglect and an opinion concerning whether this child is abused or is suspect of being abused. Include a description of the injuries and a diagram (appendix 1). A rape form should also be completed if appropriate (appendix 1).
9. Inform the parents that you are required to report the child's problems and that it is done because you are concerned about the child and them. Tell them someone will be visiting them. Delivering this unpleasant diagnosis is similar to presenting a diagnosis of malignancy. Expect and manage the family's anger and upset.
10. Include hospital and other social workers in management.
11. Continue to evaluate and treat the child and parents.
12. Continue a supportive role while Child Welfare evaluates the household and other siblings.
13. As the time for discharge approaches recontact Child Welfare and keep an open channel of communication with them concerning follow up care.
14. Plan to stay involved for a long time and participate in court procedures. Request that the attorney prepare you to testify in an appropriate fashion.

B. OTHERS.

1. See Section III, A.1.

V. MANAGEMENT PROBLEMS.

A. PROBLEMS WHICH HAVE BEEN ENCOUNTERED

1. The management of reports varies with the law.

(a) Family (T).

A 17 year old was reported because of a gunshot wound above the heart under peculiar circumstances. County A stated that there was not an open file on that person and that there were no houses at the address given. The report was returned to the reporter. It was re-reported and the home in the first county was evaluated.

(b) Family (U).

A 6 year old child was hurt in a school and was reported by the parent who worked in a child care facility. Steps were initiated to evaluate the child care facility until the error was corrected.

2. Protective Service workers.

Child welfare workers carry heavy case loads and stay in the job for short periods of time. Their basic educational requirements are a bachelor's degree and a few weeks training. Transfers can be requested from one department to another.

Worker training is not competency based which results in problems. The least skilled individuals are often at the point of making the most crucial evaluations and decisions. Supervision varies from excellent to distant and unrelated to clients. The crucial client contacts are often the responsibility of the new worker. Skills in interviewing and evaluation of adults and children cannot be achieved without specific closely supervised training.

Worker frustration is increased by lack of skill, heavy responsibilities, and difficult problems. This placement is comparable to requiring that first year medical students diagnose and treat patients.

The workers must also deal with physicians, attorneys, and others, Confrontations result which the individual must learn to manage. Often this results in rebellion, ignoring the nurses opinion for example, or submission to the fully trained professional.

The bottom line is that the worker in the field decides if abuse occured, if the family needs treatment, and if so what kind and if it will be done.

(a) Family (V).

A 2 year 3 month old boy was reported as abused by a Health Department worker on 4/2/75. The physician then referred the child for medical evaluation on 4/6/75. He was brought in by a worker on 5/20/75 because the mother had a new baby. The child was admitted over the worker's protest who asked the physician to call the parent for permission which was done. The child was described as bad tempered and speechless. Examination showed malnutrition, multiple (100-200) linear marks over his back and legs, one leg shorter than the other. X-rays showed multiple fractures of both lower extremities, elbow, hip, clavicle, and rib. The long duration and severity of the injuries indicated that there were very disrupted adults at home and that the other children were at risk for abuse and should be examined.

Protective custody of this child was obtained and he was dismissed to a foster home on 6/4/75. None of the other 3 children were examined.

On 6/4/75 the 1 1/2 month old sister was brought to the emergency room by the mother because she fell off of the bed. Physical examination showed scratches on the wrist and abdomen and overlap of skull bones. X-rays showed an old fracture of the left ulna, right radius an ulna, left tibia, rib, humerus, and three skull fractures.

She was dismissed on 6/11/75 to foster care. The other 2 children were examined on 6/4/75 apparently were small but had no fractures. All the children are still in foster care after a number of hearings, extensions, and a pretrail hearing.

The parents were seen sporadically by one psychiatrist, then by 2 workers, and most recently are involved in therapy with another psychiatrist. The children are visiting them. The initial report was made 17 months ago.

3. The courts.

Problems encountered in the courts were delays, some judges never consider terminating parental rights in the interest of the child, and the benefits of the system

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3. The courts.

Problems encountered in the courts were delays, some judges never consider terminating parental rights in the interest of the child, and the benefits of the system are difficult to understand.

(a) Family (W).

A 6 week old infant was reported as abused with subdural hematomas in April 1974 and returned to her home community where the family was supervised. The family was not evaluated or treated. Her 2 year old sister was accused of hitting the baby with a brush. One worker who was leaving planned to close the case in April, 1975 but a new worker decided to keep it open. On 4/29/75 the infant was killed with paper towels stuffed down her throat. The 3 year old girl was accused of doing this. A mental health agency refused to evaluate her so she was referred for evaluation. She was a subdued preschooler with insufficient attention span and skills to have performed the act of which she was accused.

The third child and the 3 year old were placed in foster care and then with the grandparents who returned them to the parents on several occasions. During December of 1975 both children were hospitalized and the oldest was found to have bruises. The children were then replaced in foster care.

The three year old has been in 11 foster homes during the past year and an evaluation of her behavior was requested.

(b) Family (X).

A one year old boy was treated for subdural hematomas, bruises, and human bites. After several placements in foster care, the parent won and the child was returned. After one year of stormy family relationships, the parent requested placement for her 2 children. Both had experienced some degree of medical and emotional neglect. On the day of placement, the parent was observed to bite the child 3 times and slap him to the floor in response to his temper tantrum behavior. Rehabilitation has started again.

4. Health personnel including physicians.

Many still do not report abuse. However, most respond to direct training in recognition of abuse and neglect and methods of reporting.

There is a problem recognizing a visible benefit resulting from reporting abuse. There is no organized communication system to inform the health professional about the family or status of the report.

at home and was advised to send him home where he remains.

6. Mental Health facilities.

Mental health facilities providing services for infants, children, and young families are limited. Prevention is not a high priority item.

Example: From Guide to Children Services
Early Childhood Development in Texas
Take Stock in Texas Invest in Children

Children under 5 years (1975)

Children receiving protective services:	30,794
Children in foster care:	2,698
Adoptive services:	568
Mental Health & Mental Retardation:	
State hospitals	14
Hospital outreach	350
Community services	2,585

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Family moves across a county line are difficult because a new unit must take over a case. In some situations a move across the street brings about a change in case workers.

There seems to be no regular review of children in care to insure that a child moves into permanent placement as soon as it is clear this will be necessary.

8. Funding.

Adequate funding for care is nebulous and scarce. Children in foster care should be eligible for title XIX and often for SSI, but these benefits are unevenly used for the child. Fees for ad litum attorneys for the child are minimal, fees for (expert) witnesses are seldom provided. Perhaps these problems indicate lack of knowledge about abailable resources.

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Abusers are often persecuted rather than helped and the public media can be particularly destructive to falsely accused individuals, and children and families.

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Abusers are often persecuted rather than helped and the public media can be particularly destructive to falsely accused individuals, and children and families.

APPENDIX

SAMPLE FORMS FOR REPORTING CHILD ABUSE

______________________________, Supervisor
Texas State Department of Public Welfare
____
____

RE: __________________________

UH#__________________________

DOB:__________Race:________

Dear______________________:

This report is being made under the provisions of Title 2, Chapter 34 of the Texas Family Code.

______________________________ is the child of ______________________________,

______________________________Street, ______________________________.

He/She was (seen) (treated) (admitted) here on______________________________.

On physical examination pertinent findings were:

1) Height, weight, head circumference and variation from expected size for age.

2) (Visible) scars, cuts, apparent burns, bruises (location, approximate size, likely incident time), swellings, fractures.

3) X-ray studies revealed____.

4) Inappropriate or atypical behavior of parent and/or child.

5) Miscellaneous: (rectal bleeding, hematuria, abnormal lab results if applicable, etc.).

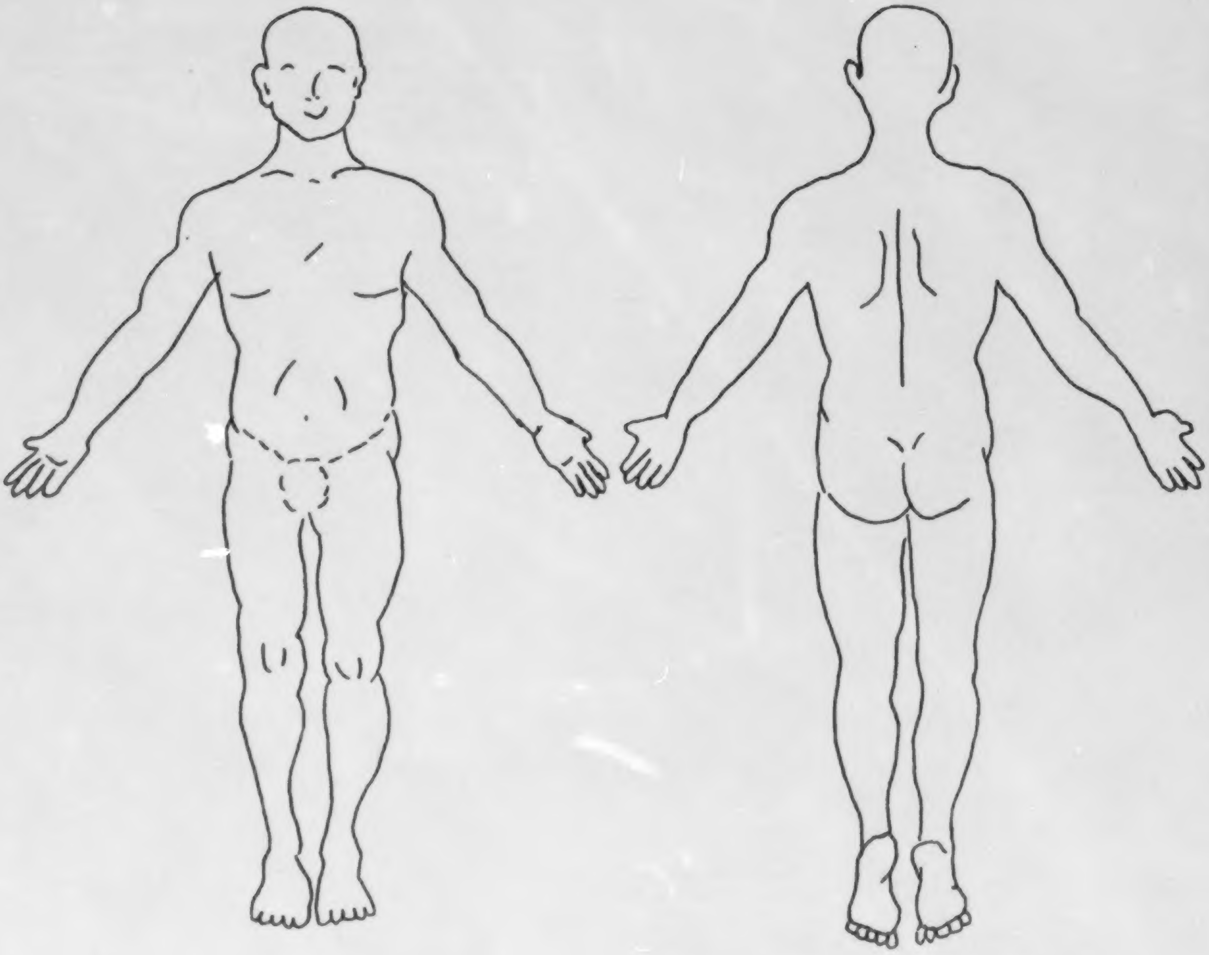
In my professional opinion this child (is) (possible) (likely) (probably) a victim of imposed (physical) (sexual) abuse or neglect.

Sincerely,

______________________, M.D.

Resident/Intern in_______________

cc: Medical Records
James Mabery, State Dept. of Public Welfare, Austin, Texas



Name: ______________________ Age: __________ Sex: __________

UH#: ______________________

Date: ______________________

Indicate area and type of injury. This diagram will accompany the child abuse reporting form.

Photographs taken: ☐

SAMPLE FORM FOR RAPE VICTIMS

Name of Patient ______________________ U.H. No. __________

Admitted to Emergency Room: Time ______________ Date __________

Name of Police Official with Patient ______________ Badge No. __________

AUTHORIZATION FOR COLLECTION OF EVIDENCE & RELEASE OF INFORMATION

I hereby authorize The University of Texas Medical Branch Hospitals to collect any blood, urine tissue or other specimens needed, and to supply copies of all medical reports, including any laboratory reports, upon completion, to the Police Department, Sherriff's Office and the Office of the District Attorney having jurisdiction.

Person Examined ______________________

Address ______________________

Date ______________________ Parent or Guardian ______________________

Witness ______________________ Address ______________________

(Above information to be obtained by Admitting Nurse)

- -

History of Incident: Time ______________ Date ______________________

Date ______________________ Examiners Signatures ______________________ M.D.

Use Addressograph Stamp Below Here

The University of Texas Medical Branch Hospitals

Galveston, Texas

Form 2617

Patient ______________________________________ U.H. No. ______________

Age ______________ Gravidity ______________ Parity ______________

Date of termination of last pregnancy

Age of menarche ______________

Date of last menses ______________

Last menses normal: Yes [ ] No [ ]
If [No] describe:

Patient known to be pregnant: Yes [ ] No [ ]

Symptoms of pregnancy: Yes [ ] No [ ]
If [Yes] describe:

Most recent coitus (prior to alleged assault) : Date ______________ Time ______________ Was condom used: Yes [ ] No [ ]

Current method of contraception (prior to alleged assault):

Vaginal tampons used: Yes [ ] No [ ] Age begun

Douching practiced: Yes [ ] No [ ] Most recent

During alleged assault:

Did penis penetrate vulva	Yes [ ]	No [ ]
Did penis penetrate rectum	Yes [ ]	No [ ]
Did assailant experience orgasm	Yes [ ]	No [ ]
Did assailant wear condom	Yes [ ]	No [ ]

Since alleged assault has patient:

Douched	Yes [ ]	No [ ]
Bathed or showered	Yes [ ]	No [ ]
Defecated	Yes [ ]	No [ ]
Urinated	Yes [ ]	No [ ]

Has patient knowledge of

Any present illness	Yes [ ]	No [ ]
Any present medication	Yes [ ]	No [ ]
Any drug allergy	Yes [ ]	No [ ]

If [Yes] describe:

History of emotional illness Yes [ ] No [ ]
If [Yes] describe:

Previous vaginal surgical procedures Yes [ ] No [ ]
If [Yes] describe:

Date ______________ Examiners Signatures ______________ M.D.

Patient ______________________________ U.H. No. ______________

Physical Examination: B.P. __________ Pulse __________ Temp. __________ Wt. __________

General Appearance

Emotional Status

Clothing: Stains? Yes [ ] No [ ]; Foreign Material? Yes [ ] No [ ];
Describe:

Body Surface: Bruises? Yes [ ] No [ ]; Scratches? Yes [ ] No [ ]; Lacerations? Yes [ ] No [ ]
Describe:

Fingernails:

Pubic Hair:

Vulva:

Hymen:

Vagina (No Lubricant)

Cervix:

Uterus:

Adnexa:

Recto-Vaginal

Sketch of perineal findings: (Label all positive findings)

Date ______________________ Examiners Signatures ______________________

Laboratory Examinations

Legal Cases		Medi-cal		✓ if collected	
rg	op	rg	op		**Emergency Room Facilities**
☒	☐	☒	☐	☐	(1) Wet mount for sperm: present? yes [ ] no [ ] mobile? yes [ ] no [ ]
☒	☐	☒	☐	☐	(2) Urine pregnancy test: positive [ ] negative [ ]
☐	☒	☐	☒	☐	(3) X-ray examination
☐	☒	☐	☒	☐	(4) Photographs
					Clinical Laboratory Specimens
☒	☐	☒	☐	☐	(1) Endocervical culture for N. Gonorrhea
☒	☐	☒	☐	☐	(2) Serology
☐	☒	☐	☒	☐	(3) Urinalysis when bladder trauma
					Forensic Pathology Specimens: Label all specimens.
☒	☐	☐	☒	☐	(1) 12 cc clotted blood (Red stopper tube). Label tube.
☒	☐	☐	☒	☐	(2) Fingernail scrapings—place in envelope. Label envelope.
☒	☐	☐	☒	☐	(3) Pubic hair—Comb & collect in envelope (discard comb). Label envelope.
☒	☐	☐	☒	☐	(4) Pubic hair—cut 10-12—place in envelope. Label envelope.
☒	☐	☐	☒	☐	(5) Loose hair—dried blood—Place in envelope—note site of collection. Label envelope.
☒	☐	☐	☒	☐	(6) Vaginal contents—prepare 2 slides—spray with fixative.—Label slide and place in slide holder.
☒	☐	☐	☒	☐	(7) Vaginal contents—wet cotton swab with vaginal secretions and place in dry test tube. Label test tube.
☒	☐	☐	☒	☐	(8) Vaginal contents—wet cotton swab with vaginal secretions, place in test tube containing 2-3 ml. saline. Label test tube.
☐	☒	☐	☒	☐	(9) Oral contents—prepare 2 slides, spray with fixative.—Label slides and place in slide holder.
☐	☒	☐	☒	☐	(10) Oral contents—wet cotton swab with oral secretions, place in dry test tube. Label test tube.
☐	☒	☐	☒	☐	(11) Oral contents—wet cotton swab with oral secretions, place in test tube containing 2-3 ml. saline. Label test tube.

Impression:

Recommendations:

Appointments:

I hereby certify that this is a true and correct copy of the examination of the above named patient.

Date ______________________ Examiners Signature ______________________.

Forensic Pathology Laboratory Specimens released to ______________________

at __________ (time) ______________ (date) Signature ______________________

Forensic Pathology Laboratory Specimens received Signature ______________________

ERRATA PAGE

H - 2	Line 8	reported cases instead of report number
H - 2	Line 14	occurrence instead of occurence
H - 4	Line 12	requires instead of require; omit an
H - 4	Line 28	disturbances instead of distrubances
H - 10	Line 35-38	Unusual eating and drinking patterns may be described in emotionally deprived children; for example, eating food from a garbage can. Disturbed sleep patterns also occur.
H - 11	Line 8	insert children after or
H - 11	Line 28	This instead of which
H - 18	Line 18-19	The parent sought out medical care and the physician reported the sexual abuse to Child Welfare.
H - 20	Line 13	1-800-292-5400 instead of 1-800-292-500
H - 22	Line 7-9	County A stated that there was not an open file on that person and that the report was being sent to County B. County B stated that there were no houses at the address given.
H - 22	Line 33-35	This is comparable to requiring that first year medical students assume total responsibility for the diagnosis and treatment of patients.
H - 22	Line 40	insert which may not be appropriate after professional.
H - 23	Line 6	insert and a worker visited the home after 4/2/75.
H - 23	Line 6	New paragraph. The Health Department then referred the child for medical evaluation on 4/6/75.
H - 23	Line 8	New paragraph. He was brought . . .
H - 23	Line 44	the adversary system instead of the system
H - 24	Line 4	April 1974. She was
H - 24	Line 30	"won" the case instead of won and
H - 25	Line 13	was then reported instead of was reported
H - 25	Line 14-16	After further discussion with Child Welfare he was placed in foster care for 6 months and then returned to the family. He was reported again for burns and placed in foster care.

H - 25 Line 35 He also had instead of He had

H - 26 Line 38-40 Abusers are often persecuted rather than helped and the public media can be particularly destructive to individuals, and children and families. The falsely accused abusers can be destroyed without recourse.

H - 27 Insert new paragraph after line 5.

This results in uneven presentation to courts by district attorneys. What may be clearly identified as gross abuse by physicians and child welfare workers can be discounted as "not enough evidence" and never brought for court review. Apparently having an identified perpetrator whose action can be proved is essential in some situations. (See family W)

H - 27 Line 21 Buchenwald instead on Buckenwald

OFFICES AND PROJECTS
CONCERNED WITH CHILD ABUSE AND PROTECTIVE SERVICES

REGION VI RESOURCE CENTER ON CHILD
ABUSE AND NEGLECT
Center for Social Work Research
University of Texas School of
Social Work
University of Texas at Austin

September 1976

OFFICES AND PROJECTS
CONCERNED WITH CHILD ABUSE AND PROTECTIVE SERVICES

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OFFICES AND PROJECTS
CONCERNED WITH CHILD ABUSE AND PROTECTIVE SERVICES

I. INTRODUCTION

This Directory of Offices and Projects Concerned with Child Abuse and Protective Services has been compiled by the Region VI Resource Center on Child Abuse and Neglect. This section is intended to be utilized not only as a resource directory when making individual referrals, but also to facilitate cooperation and coordination among programs.

Because of the numerous child abuse and neglect efforts going on throughout the country, it is impossible to include an exhaustive directory as a chapter in this Institute booklet; such a volume including all of the efforts going on in Texas alone would be larger than the entire book. It is hoped, however, that this Directory will provide a beginning to you in identifying child abuse and neglect efforts throughout the country, especially those in Texas.

For those of you who would like more extensive information, you might wish to obtain the Directory of Child Welfare Resources published by the Texas State Department of Public Welfare; the Reference Handbook and Directory: Child Abuse and Neglect, Region VI, published by the Region VI Resource Center on Child Abuse and Neglect; Child Abuse and Neglect Research: Projects and Publications, and Child Abuse and Neglect Programs, published by the National Center on Child Abuse and Neglect; and the National Directory of Child Abuse Services and Information, published by the National Committee for Prevention of Child Abuse. Also, Directory of Agencies (Nat'l Asso. of Social Workers).

The programs described in the Texas section were identified through a region-wide survey conducted by the Resource Center in the Spring of 1976. A sample of the survey questionnaire is included in the Appendix of this chapter. If you are aware of a program in Texas not included in the section, the Resource Center would be interested in receiving a copy of the survey supplying the information.

II. NATIONAL OFFICES AND PROJECTS CONCERNED WITH CHILD ABUSE PROTECTIVE SERVICES

A. NATIONAL CENTER ON CHILD ABUSE AND NEGLECT

The Center was created by the Child Abuse Prevention and Treatment Act (PL93-247) signed into law on January 31, 1974, as a focal point for Federal efforts at identifying, treating, and preventing child abuse and neglect. The Center is located in the Children's Bureau of HEW's Office of Child Development. The Center has an Advisory Board composed of representatives of all Federal agencies and programs related to child abuse and neglect. Programs have been initiated in four major areas: information gathering and dissemination, training and technical assistance, demonstration and research, and assistance to States. Contact: Mr. Douglas Besharov, Director, National Center on Child Abuse and Neglect, P.O. Box 1182, Office of Child Development, Washington, D.C. 20013.

The following projects are funded by the National Center:

1. Nation-wide Training, Technical Assistance and Information-Gathering Contracts:

Assessment of Training and Technical Assistance Requirements of Child Abuse and Neglect Programs and Activities. Contact: Eddie A. Taylor, Development Associates, Inc., 1521 New Hampshire Avenue, N.W., Washington, D.C. 20036.

Child Abuse and Neglect Curriculum Development. Contact: Noel Day, Urban and Rural Systems Associates, Pier 1½, San Francisco, California 94111.

Clearinghouse on Programs and Summarization of Research on Child Abuse and Neglect. Contact: Douglas Berninger, Ph.D., Herner and Company, 2100 M Street, N.W., Washington, D.C. 20037.

National Incidence Study. Contact: Marvin Burt, Burt Associates, Inc., 7315 Wisconsin Avenue, Bethesda, Maryland 20014.

Provision of Technical Assistance in the Development of Child Abuse and Neglect Public Awareness Programs and Materials. Contact: William G. Moore, Joseph A. Davis Consultants, Inc., 104 E. 40th Street, Suite 203, New York, New York 10016.

Provision of Technical Assistance in the Development and Improvement of Child Abuse and Neglect Reporting Systems and Central Registers. Contact: Quinn Shelton, National Institute for Community Development, 2021 K Street, N.W., Washington, D.C. 20006.

Provision of Training of Selected Personnel from Organizations and Agencies Having Child Abuse and Neglect Responsibilities in Region I-V. Contact: Robert MacDicken, Kirschner Associates, Inc., 733 15th Street, N.W., Washington, D.C. 20005.

State Child Abuse and Neglect Grant Program. Contact: Robert C. Harder, Kansas Department of Social and Rehabilitative Services, State Office Building, Topeka, Kansas 66618.

Training of Selected Personnel from Organizations and Agencies Having Child Abuse and Neglect Responsibilities in Regions VI-X and Among Indian Populations. Contact: David Boorkman, Urban and Rural Systems Associates, Pier 1½, San Francisco, California 94111.

2. Research and Evaluation Projects:

Abuse and Neglect Among Low-Income Families: A Comparative Study of Adequate and Inadequate Child Care. Contact: Dr.

Bernard Horowitz, New Jersey Division of Youth and Family Services, One South Montgomery Street, Trenton, New Jersey 08625.

Apathy-futility Syndrome in Child Neglect: An Urban View. Contact: Norman A. Polansky, School of Social Work, University Of Pennsylvania, Philadelphia, Pennsylvania 19104.

Causal Factors in Neglect and Battering: A Prospective Service. Contact: William A. Attemeier, III, M.D., Vanderbilt University Hospital, Department of Pediatrics, Nashville, Tennessee 37237.

Evaluation Measures for Child Abuse and Neglect Projects. Contact: James R. Seaberg, Ph.D., Center for Social Welfare Research, School of Social Work, University of Washington, Seattle, Washington 98195.

Evaluation of Formative Demonstration Centers. Contact: Earl F. Doty, E.H. White and Company, 347 Clement Street, San Francisco, California 94118.

Evaluation of Formative Resource Projects. Contact: James Gee, Associate Control Research and Analysis, Inc., 1000 Vermont Avenue, N.W., Washington, D.C. 20005.

Evaluation of Selected Child Abuse and Neglect Service Components. Contact: Ms. Janne B. Dinges, State Department of Public Welfare, John H. Reagan Building, Austin, Texas 78701.

An Exploratory Investigation of Potential Societal and Intrafamilial Factors Contributing to Child Abuse and Neglect. Contact: Dr. Evangeline Ward, National Council for Black Child Development, Inc., 490 L'Enfant Plaza East, Suite 3204, Washington, D.C. 20024.

An Exploratory Study of Defining and Classifying Cases of Child Abuse. Contact: Richard J. Gelles, University of Rhode Island, Kingston, Rhode Island 02881.

Family Interaction Patterns Related to Child Abuse and Neglect. Contact: Dr. Robert L. Burgess, Professor, College of Human Development, The Pennsylvania State University, University Park, Pennsylvania 16802.

Identification and Definition of factors Causally Associated with Child Abuse and Neglect. Contact: Dr. Arthur H. Green, Department of Psychiatry, Downstate Medical Center, State University of New York, 450 Clarkson Avenue, Brooklyn, New York 11203.

An Investigation of the Effects of a Multidimensional Service Program on Recidivism/Discontinuation of Child Abuse and Neglect. Contact: Dr. Roy C. Herrenkohl, Jr., Center for Social Research, Department of Social Relations, Lehigh University, Bethlehem, Pennsylvania 18015.

Identification of the Factors Effective in the Discontinuation of Parental Abuse and Neglect. Contact: Ann W. Shyne, Child Welfare League of America, 67 Irving Place, New York, New York 10003.

An Investigation of the Relationship Between Substance Abuse and Child Abuse. Contact: Joseph Mayer, Ph.D., Washingtonian Center for Addiction, Boston, Massachusetts 02130.

A Prospective Study of the Antecedents of Child Abuse. Contact: Dr. Byron Egeland, Department of Educational Psychology, University of Minnesota, Room N-548, Elliott Hall, Minneapolis, Minnesota 55455.

Texas

San Antonio Child Abuse/Neglect Research Project. Contact: Mr. Jose Rendon, Mexican-American Neighborhood Civic Organization, P.O. Box 7349, San Antonio, Texas 78207.

Service Project to Determine Reliability and Validity of Child Rearing Questionnaire. Contact: Ray E. Helfer, M.D., Department of Human Development, Michigan State University, East Lansing, Michigan 48824.

3. Resource Center Demonstration Projects:

Arizona Community Development for Abuse and Neglect. Contact: Dr. Gloria Olson, Department of Economics Security, Bureau of Community Support, P.O. Box 6123, Phoenix, Arizona 85005.

The Educational System's Role in Child Abuse and Neglect. Contact: James H. Peterson, Education Commission of the States, Department of Planning and Development, 1860 Lincoln Street, Denver, Colorado 80203.

Hawaii Child Abuse Demonstration Center. Contact: Sherrell L. Hammar, M.D., Kauikeolani Children's Hospital, 226 North Kaukini Street, Honolulu, Hawaii 96817.

H.E.L.P. Resource Project for Children and Families. Contact: Curtis L. Decker, Maryland Department of Employment and Social Service, 1100 North Eutaw Street, Baltimore, Maryland 21201.

Multi-State Child Abuse and Neglect/Resource Demonstration Project. Contact: George Thomas, Ph.D., University of Georgia, Tucker Hall, Athens, Georgia 30601.

National Study on Child Abuse and Neglect. Contact: Dr. C. Henry Kempe, National Center on Child Abuse, University of Colorado Medical Center, 1205 Oneida Street, Denver, Colorado 80220.

Protective Services Resource Institute. Contact: Lawrence T. Taft, Rutgers Medical School, Department of Pediatrics, University Heights, Piscataway, New Jersey 08854.

Regional Resource Center for Region III. Dr. Lawrence E. Cary, Institute for Urban Affairs and Research, Howard University, P.O. Box 191, Washington, D.C. 20059.

Regional Resource Project Region V. Contact: Dr. Catherine S. Chilman, School of Social Welfare, The University of Wisconsin-Milwaukee, Milwaukee, Wisconsin 53201.

Texas

Region VI Resource Center on Child Abuse and Neglect. Contact: Donna Scott, The School of Social Work, The University of Texas at Austin, Austin, Texas 78712.

Region VII Child Abuse and Neglect Resource Center. Contact: Dr. William Thiesen, Institute of Child Behavior and Development, University of Iowa, Iowa City, Iowa 52242.

A Resource Project for Region IX. Contact: Mr. Hershel Swinger, California State University, Los Angeles, 5151 State University Drive, Los Angeles, California 90032.

Region X Resource Project for Child Abuse and Neglect. Contact: Mr. Elwyn Wenger, Northwest Federation for Human Services, c/o Statehouse, Boise, Idaho 83720.

Resource Development for Activities Related to Child Abuse and Neglect in New York State. Contact: E. Ronald Bard, Cornell University, NG--14 MUR Hall, Ithaca, New York 14853.

A Statewide Program for Maltreated Children. Contact: Dean George R. Holcomb, Office of Research Administration, South Building, University of North Carolina, Chapel Hill, North Carolina 27514.

Urban Indian Child Resource Center. Contact: Jennie R. Joe, Indian Nurses of California, Inc., 2680 O'Hara, San Pablo, California 94806.

4. Direct Service Demonstration Projects:

Appalachian Citizens for Children's Rights. Contact: Patricia M. Keith, Family Service Association, 364 High Street, Morgantown, West Virginia 26505.

Bedford-Stuyvesant Family Services Program. Contact: T. George Silcott, The Wiltwyck School, 1239-41 Fulton Street, Brooklyn, New York 11216.

Child Abuse and Neglect Demonstration Center. Contact: Cassandra Smith, City of Detroit Youth Department, 2 Woodward, Detroit, Michigan 48226.

Texas Child Abuse and Neglect Demonstration Organization (CAN-DO). Contact: Charles A. Cass, Central Texas Council of Governments, P.O. Box 729, Belton, Texas 76513.

Child Abuse and Neglect Service Project. Contact: Betty Bay, Montana Department of Social and Rehabilitation Services, P.O. Box 1723, Helena, Montana 59601.

Texas Child Advocacy Resources Expansion (CARE). Contact: Charla McCoy, Texas Department of Public Welfare, John H. Reagan Building, Austin, Texas 78701.

Children's Hospital National Medical Center Child Abuse and Neglect Model Center. Contact: Robert V. Morin, Research Foundation of Children's Hospital, 2125 13th Street, Washington, D.C. 20009.

Choctaw Center on Child Abuse and Neglect. Contact: Phillip Martin, Mississippi Band of Choctaw Indians, Route 7, Box 21, Philadelphia, Mississippi 39350.

Clayton County Protective Service Team. Contact: Anne T. Plant, Clayton County Department of Family and Children Services, 129 King Street, Jonesboro, Georgia 30236.

Connecticut Child Abuse and Neglect Demonstration Center. Contact: Francis H. Maloney, Connecticut Department of Children and Youth Services, 345 Main Street, Hartford, Connecticut 06106.

Cook Inlet Native Association Child Abuse and Neglect Program. Contact: Robert W. Rude, Cook Inlet Native Association, P.O. Box 515, Anchorage, Alaska 99510.

Demonstration Center for Child Abuse and Neglect. Contact: Victor C. Vaughn III, M.D., St. Christopher's Hospital for Children, 2600 North Lawrence Street, Philadelphia, Pennsylvania 19133.

Demonstration Project for Child Abuse and Neglect. Contact: Dr. Bruce D. Graham, The Children's Hospital Research Foundation, 561 South 17th Street, Columbus, Ohio 43205.

Demonstration Project for Coordinated Delivery of Social Services to Children Residing on a Military Base and in Surrounding Rural Counties. Contact: Jean Dycus, Tennessee Department of Public Welfare, Social Services Division, 410 State Office Building, Nashville, Tennessee 37219.

Developing a Community of Child Care and Concern for Native American Children and Families. Contact: John Red Horse, University of Minnesota, Center for Urban and Regional Affairs, 311 Walter Library, Minneapolis, Minnesota 55455.

Family and Child Advocates. Contact: Jeanne M. Fox, Evanston Mental Health Services, 1601 Sherman Avenue, Evanston, Illinois 60201.

The Family Development Program. Contact: John G. Cosgrove, College of Medicine and Dentistry of New Jersey, Martland Hospital Unit, Department of Social Services, 65 Bergen Street, Newark, New Jersey 07107.

Family Resource Center. Contact: Wayne Holder, Family Resource Center, 8016 Zuni, S.E., Albuquerque, New Mexico 87108.

Family Stress Center. Contact: Joseph Wilcox, YMCA Human Development Department, 1115 Eighth Avenue, San Diego, California 92101.

Metropolitan Area Protective Services Project. Contact: Mary Lee Leahy, Illinois Department of Children and Family Services, 524 South Second Street, Springfield, Illinois 62706.

Texas

Migrant Child Abuse and Neglect Prevention Project. Contact: Oscar L. Villarreal, Texas Migrant Council, Inc., P.O. Box 917, 2220 Station Ursula, Laredo, Texas 78040.

National Urban League Child Abuse Project. Contact: Soraya M. Davis, National Urban League, Inc., Community Development Department, 55 East 52nd Street, New York, New York 10022.

Parental Stress Center. Contact: Harold Luebs, Children's Hospital of Pittsburgh, 125 DeSoto Street, Pittsburgh, Pennsylvania 15213.

Project Ku nak we sha' (Caring). Contact: Maxine W. Robbins, The Yakima Indian Nation, P.O. Box 632, Toppenish, Washington 98948.

Proposal for a Management Support System to Assist the Massachusetts Department of Public Welfare. Contact: Julius B. Richmond, M.D., Judge Baker Guidance Center, 295 Longwood Avenue, Boston, Massachusetts 02115.

Regional Child Abuse Treatment and Referral Demonstration Center. Contact: William Galvagni, Norton-Children's Hospital, Inc., 200 Kast Chestnut Street, Louisville, Kentucky 40202.

The following direct service demonstration projects were initially funded by the HEW Intradepartmental Committee on Child Abuse and Neglect and are being continued by the National Center:

Arkansas Child Abuse and Neglect Project. Contact: Janet Knight, Arkansas Social Services, P.O. Box 1437, Little Rock, Arkansas 72203.

Child Abuse/Neglect Demonstration Unit. Contact: Doris Gonzalez Knudson, Department of Social Services, P.O. Box 11398, San Juan, Puerto Rico 00908.

Child Protection Center. Contact: Jeannette Hendrix, Louisiana Division of Family Services, 755 Riverside N., P.O. Box 44065, Baton Rouge, Louisiana 70805.

Coordinating Community Concern for Child Abuse. Contact: The Panel for Family Living, 420 South L. Street, Tacoma, Washington 98405.

Family Care Center. Contact: Robert Greenberg, M.D., Charles R. Drew Postgraduate Medical School, 1621 E. 120th Street, Los Angeles, California 90059.

The Family Learning Center Project. Contact: Margaret Nicholson, Adams County Department of Social Services, 4200 E. 72nd Avenue, Commerce City, Colorado 80022.

Family Resource Center. Contact: Gregory Eschele, The Family Resource Center, St. Louis Children's Hospital St. Louis, Missouri 63108.

Makah Child Development Services Center. Contact: Mary Jo Butterfield, Makah Tribal Council, P.O. Box 507, Neah Bay, Washington 98357.

Parent and Child Effective Relations Project. Contact: Charlene Bennett, Juvenile Welfare Board of Pinellas County, 3455 First Avenue South, St. Petersburg, Florida 33711.

Pro-Child: A Child Abuse and Neglect Program. Contact: Julia Kanwit, Arlington County Board of Public Welfare, P.O. Box 7258, Arlington, Virginia 22207.

A Protective Service System-Union County, New Jersey. Contact: Bonnie Ludlow, State of New Jersey-Division of Youth and Family Services, 1155 Magnolia Avenue, Elizabeth, New Jersey 07207.

B. OTHER FEDERAL OFFICES

In addition to the Office of Child Development, which houses the National Center on Child Abuse and Neglect, other Federal Offices also fund a number of child abuse and neglect projects:

1. Education, Training and Technical Assistance:

a. Department of HEW Intradepartmental Committee on Child Abuse and Neglect:

The Abused, Maltreated and Neglected Child. Contact: Nathan Gross, New York City Board of Education, Community School District No. 18, 545 Utica Avenue, Brooklyn, New York 11203.

Texas

Child Abuse: A Multi-disciplinary Interagency Program for Identification and Referral (Project Lift-A-Finger). Contact: Stuart McKenty, Consortium C, EPD, 202 North Loop West, Houston, Texas 77018.

Development of Training Models for the Identification, Treatment and Prevention of Child Abuse and Neglect. Contact: Sherrell Munce, Children's Hospital Medical Center, Children's Trauma Center, 51st and Grove Street, Oakland, California 94609.

A Multi-disciplinary Approach to Educational Problems Associated with Child Abuse and Neglect (Project Protection). Contact: Diane Broadhurst, Montgomery County Public Schools, 850 Hungerford Drive, Rockville, Maryland 20850.

Workshop on Protective Services for Children. Contact: Edward J. Durnall, Division of Continuing Education, University of New Hampshire, Durham, New Hampshire 03824.

b. National Institute on Alcoholism:

Family Therapy Training. Contact: David Berenson, Center for Family Learning, New Rochelle, New York 10805.

Community Program for Families with Problem Drinkers. Contact: Peggy Papp, Center for Family Learning, New Rochelle, New York 10805.

2. Information Gathering and Dissemination:

a. The Intradepartmental Committee Funds the Following Projects:

Development of Evaluation System for Measuring Cost Effectiveness of Protective Services. Contact: Dr. Marvin Burt, Burt Associates, Inc., 7315 Wisconsin Avenue, Bethesda, Maryland 20014.

Early Warning Signals of Serious Neglect and Abuse. Contact: Jeanne M. Giovannoni, School of Social Welfare, University of California, Los Angeles, 405 Hilgard Avenue, Los Angeles, California 90024.

National Clearinghouse for Child Abuse and Neglect. Contact: Vincent De Francis, J.D., The American Humane Association (Children's Division), P.O. Box 1266, Denver, Colorado 80201.

Parents Anonymous Self-Help for Child Abusing Parents. Contact: Leonard L. Lieber, Parents Anonymous, 2810 Aresia Boulevard, Redondo Beach, California 90278.

Revision of the 1962 Model Child Abuse (and Neglect) Reporting Law. Contact: Alan Sussman, Institute of Judicial Administration, 40 Washington Square South, New York, New York 10012.

State of Knowledge of Child Neglect. Contact: Dr. Norman A. Polansky, Regional Institute of Social Welfare Research, University of Georgia, 1260 South Lumpkin, Athens, Georgia 30602.

Structure and Performance of Programs of Child Abuse and Neglect. Contact: Dr. Saad Z. Nagi, Ohio State University, 1250 Chambers Road, Columbus, Ohio 43212.

b. The Law Enforcement Assistance Departments Funds the Following:

Juvenile Justice Standards Project. Contact: Paul Nejelski, Institute of Judicial Administration, 33 Washington Square, New York, New York 10011.

Physical Child Abuse Prescriptive Package. Contact: Arnold Schuchter, Center for Community Resource Development, Boston University, 710 Commonwealth Avenue, Boston, Massachusetts 02215.

3. Direct Service Projects:

a. National Institute on Drug Abuse:

The Odyssey House Parent's Demonstration Program. Contact: Dr. Judeanne Densen Gerber, M.D., Odyssey House, 309-311 East 6th Street, New York, New York 10003.

The New York Medical College Program for Pregnant Addicts and Addicted Mothers. Contact: Dr. Richard Brotman, M.D., New York Medical College, 5 East 102nd Street, New York, New York 10029.

Women's Center/Detroit-Wayne County Mental Health Board. Contact: Ms. Jane Mannette, W.O.M.A.N. Center, 4105 Cass, Detroit, Michigan 48201.

Women, Incorporated (Boston). Contact: Ms. Patricia Ready, Women, Inc., 134 Mt. Auburn Street, Cambridge, Massachusetts 01432.

C. OTHER PROGRAMS OF NATIONAL INTEREST

1. American Humane Association-Children's Division.

The Children's Division of the American Humane Association is a voluntary group that has been in existence since 1877 and serves as a nationwide center to provide information and training in various aspects of child abuse and neglect. A number of publications relating to various aspects of child abuse and neglect are available from the Center. Contact: Vincent DeFrancis, J.D., Director, The American Humane Association, P.O. Box 1266, Denver, Colorado 80201.

2. National Center for the Prevention and Treatment of Child Abuse and Neglect.

The Center was established in 1972 to provide extensive education, research, and clinical materials for professionals in child abuse as well as ongoing direct services to families. The Center has a multidisciplinary staff and has also developed a number of audio-visual training materials. Contact: Dr. C. Henry Kempe, 1205 Oneida, Denver, Colorado 80220.

3. National Committee for Prevention of Child Abuse.
The National Committee was formed to coordinate volunteer efforts in the area of child abuse and neglect as well as to conduct a national media campaign. Contact: Donna Stone, Room 510, 111 East Wacker Drive, Chicago, Illinois 60601.

4. New York Founding Hospital.
This hospital based program combines psychiatric, medical and social services in treatment of child abuse and neglect. They have also developed a number of resource materials. Contact: Vincent J. Fontana, M.D., Director, New York Founding Hospital, 1175 3rd Avenue, New York, New York 10021.

5. Parental Stress Service.
This volunteer hotline operates a 24-hour service that provides the following assistance:

   (1) listening and helping parents cope with stress;

   (2) sending volunteers to homes when needed;

   (3) providing referrals when needed.

   Contact: Carol Johnston, Executive Director, 1940 Virginia Street, Berkeley, California 94709.

6. Parents Anonymous.
Begun in 1970, Parents Anonymous now has over 500 chapters throughout the country. The program serves as a self-help group for parents who need a group support experience. Contact: Leonard L. Lieber or Jolly K., Parents Anonymous, 2810 Artesia Boulevard, Redondo Beach, California 90278.

7. American Academy of Pediatrics.
Involved in medical efforts in child abuse and neglect. Provide conferences, training, and materials for medical personnel. Contact: American Academy of Pediatrics, 1801 Hinman Avenue, Evanston, Illinois 60204.

8. American Bar Association.
Provide resources and training related to legal aspects of child abuse and neglect. The Spring, 1975 issue of their publication Family Law Quarterly (cost $10.00) is devoted to all child neglect laws in America.

9. Children's Hospital Medical Center.
A hospital-based program that provides medical training and research, much of it focused on parenting, as it relates to abuse and neglect. Contact: Eli Newberger, M.D., Children's Hospital Medical Center, 3000 Longwood Avenue, Boston, Massachusetts 02115.

10. Child Welfare League of America.
This organization provides information and consultation to programs involved in child welfare. They also have a number of materials available and hold regional conferences annually. Contact: Child Welfare League of America, 67 Irving Place, New York, New York 10013.

11. National Conference of Lawyers and Social Workers.
The Conference attempts to deal with multi-disciplinary aspects of human services as they relate to law and social work. Contact: National Conference of Lawyers and Social Workers, 1425 H Street, N.W., Washington, D.C. 20005.

12. National Council of Juvenile Court Judges.
This group, composed of juvenile court judges, holds an annual conference and has materials available relating to judicial aspects of child abuse and neglect. Contact: Louis W. McHardy, Executive Director, P.O. Box 8978, University of Nevada, Reno, Nevada 89507.

III. REGIONAL OFFICES AND PROJECTS CONCERNED WITH CHILD ABUSE AND PROTECTIVE SERVICES

A. REGION VI OFFICE OF HUMAN DEVELOPMENT

Texas The United States is divided into 10 Federal governmental regions with regional offices structured similarly to those in Washington, D.C. Region VI includes the five states of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

The Regional Office of Human Development in Dallas is the Office responsible for relating to child abuse and neglect concerns within the Region. The Region's Protective Services Specialist works closely with the Southwest Federal Regional Committee on Children and Youth and its Protective Services Task Force, which consists of representatives from various regional offices, the Region VI Resource Center, and from each of the five states.

Goals of the Regional Office include assisting states in complying with the new federal regulations relating to child abuse and neglect; providing training and technical assistance to states in the areas of identification, referral, treatment and prevention of child abuse and neglect; assisting states in improving service delivery systems and interagency coordination, and in developing strategies for prevention of child abuse and neglect. Contact: Jean Manning, Protective Services Specialist, Office of Human Development, Fidelity Tower Building, 1507 Pacific Avenue. Dallas, Texas 75201.

B. REGION VI RESOURCE CENTER ON CHILD ABUSE AND NEGLECT

The Region VI Resource Center on Child Abuse and Neglect (RRCAN) is the resource demonstration project funded by the National Center to provide training, technical assistance, and resources in the areas of child abuse and neglect to the five states in Region VI. Located at the Center for Social Work Research, School of Social Work, University of Texas at Austin, RCCAN is working to establish a regionwide network of technical support services for dealing with the prevention, identification, and treatment of child abuse and neglect. RCCAN utilizes a multi-disciplinary approach through three components.

The University of Texas Law School is providing research regarding various issues relating to child abuse and neglect; curriculum which can be used for continuing legal education programs, and legal consultation for agencies and programs involved in child abuse and neglect prevention and treatment.

The Medical Component, based at the University of Texas Medical Branch at Galveston, is focusing upon innovating a variety of approaches dealing with the medical issues related to child abuse and neglect.

The Social Work Component, based at the University of Texas School of Social Work at Austin, is addressing its attention to assessments of social service delivery systems, an analysis of existing child abuse and neglect literature, and development of prototype resource and training strategies which can be utilized by a variety of groups involved in the field of child abuse and neglect.

The Center's Technical Information Service consists of a comprehensive collection of resource materials dealing with all aspects of child abuse and neglect, including audiovisual materials available for loan to states within Region VI. Contact: Donna Scott, Region VI Resource Center on Child Abuse and Neglect, Center for Social Work Research, University of Texas at Austin, Austin, Texas 78712.

C. FEDERAL CONTRACTORS

The Region VI Office of Human Development and the Region VI Resource Center are working closely together in an attempt to coordinate all child abuse and neglect efforts within the Region. There are several contractors who are providing services to the Region:

1. Development Associates.
   Under contract from the National Center, they have completed a needs assessment throughout the region related to child abuse and neglect. This needs assessment has been used in establishing OHD's and RCCAN's goals and objectives.

2. Urban and Rural Systems Associates.
   Also under contract from the National Center, URSA completed two week-long training sessions in child abuse and neglect for 120 persons in a variety of disciplines. They have also developed multidisciplinary training modules, which are being field tested during 1977 in two states in this Region, Arkansas and New Mexico. Following completion of the field tests and final revisions, they will be available to all states for use in training.

3. Joseph A. Davis Associates.
   This group, also under contract from the National Center, is field testing a public awareness campaign in two states in this Region, Arkansas and New Mexico.

4. Kirschner Associates
   Under contract from the Region VI Office of Human Development, this contractor is conducting fourteen training sessions on various topics related to child abuse and neglect throughout the Region during the 1977 fiscal year. Content to be presented is being planned in conjunction with each state.

D. REGION VI DEMONSTRATION PROJECT

The following federally funded demonstration projects related to child abuse and neglect are located within Region VI:

1. Project Lift-A-Finger.
   This project, funded by HEW's Office of Education and administered by the Region IV Education Service Center, just completed its final year. Four separate audio-tutorial packages on the subject of child abuse and prevention are available:

a. School Administrator's Package;

b. Teacher's Package;

c. Citizen's Package; and,

d. Student's Package.

The packages consist of one or more slide tapes plus a manual containing instructions for use of the package, supplementary materials, and pre- and post-tests. Contact: Stuart B. McKenty, Coordinator of Consortium C., P.O. Box 863, Houston, Texas 77001.

2. PROJECT CANRED (Child Abuse and Neglect Resources Demonstration)
This project's goal is to produce major components in the development of an integrated resources and services delivery system to meet the needs of abused and neglected children and their families. The project is based on recognition of the need for a comprehensive and integrated multidisciplinary service delivery and support system for the effective resolution of the problem of child abuse and neglect.

This demonstration project is comprised of three Action Areas, each with its own objectives and anticipated benefits:

The objective of Action Area 1 is to evaluate and improve, as indicated, specified components of current DPW identification services.

The objective of Action Area 2 is to identify specific services needed for the protection of abused and neglected children and to improve their social and emotional functioning and that of their families.

The objective of Action Area 3 is to access and increase the capacity of local communities to provide services to deal with the problem of child abuse and neglect through the systematic delineation and coordination of current and potential service providers.

The project is administered by the DPW Special Projects Bureau. Contact: Janne B. Dinges, Director, Project CANRED, 3000 S. Interregional, Austin, Texas 78704.

3. Project CAN-DO.
The goal of this project, which is administered by the Central Texas Council of Governments, is to insure a continuum of services from prevention, to identifying, to diagnostic evaluations, to treatment, through followup for both the child-abusing adult

and the child that has been abused.

Objectives of the program are to: (a) increase public awareness of the problem of child abuse and neglect; (b) encourage identification and reporting; (c) coordinate a regional referral activity under DPW; (d) coordinate services with existing resource agencies and develop innovative approaches; and, (e) devise a comprehensive volunteer program to stimulate community participation.

CAN-DO services the seven central counties of Coryell, Lampasas, Mills, Bell, Hamilton, Milan, and San Saba. Contact: Jack Knox, Director, Project CAN-DO, P.O. Box 729, Belton, Texas 76513.

4. San Antonio Child Abuse/Neglect Research Project.
It is the objective of this project to conduct two separate studies to determine the significant relationship between:

a. the use of mood-changing chemicals such as drugs or alcohol and child abuse;

b. the use of these mood-changing chemicals and child neglect.

To meet these objectives, the project utilizes a systematic and scientific approach. The steps include:

a. collaborative efforts with various agencies working with children and youth, ranging from law enforcement to child welfare agencies to individual citizens in the community;

b. a historical study to gather the data available on child abuse or neglect; and,

c. generating information to establish a city-wide Master Index Resource File on Child Abuse and/or Neglect, since there is a lack of a defined body of research in the field of child development that demonstrates a relationship between abusive or neglectful behavior of a parent, parents, or parent surrogate who abuse drugs/alcohol and child abuse and neglect.

Consequently, this has hindered the appropriate professional discipline and the prospective communities from applying remedial approaches to the welfare of children. The program is attempting to provide this body of knowledge and is available to educators, professionals, physicians, social workers, welfare workers, citizens, and parents, etc.

To date, the sponsor, MANCO (Mexican-American Neighborhood Civic Organization), has established a solid and successful track record in working with youth development. On this firm foundation, MANCO has the whole-hearted backing of many of the agencies which will play an important role in determining the success of this project. Some of these are: The County Commissioners and all county agencies under their authority, law enforcement agencies, the Local Housing Authority Area Settlement House, the Community Child Guidance Center, leading educators (to include University-level professors), etc. Contact: Dario Chapa, Director, San Antonio, Child Abuse/Neglect Research Project, 118 Broadway, Suite 327, San Antonio, Texas 78205.

5. Migrant Child Abuse and Prevention Program.
   This new project, administered by the Texas Migrant Council, is attacking the problem of abuse and neglect among Texas migrants. The program will involve a variety of services to the migrants and will follow them as they move north from Texas. Special emphasis is being placed on using the extended family in treating abuse and neglect, and obtaining migrant foster families for migrant children who have been removed from the home. Contact: Abdon Ibarra, Director, Migrant Child Abuse and Prevention Program, P.O. Box 917, Laredo, Texas 78040.

6. Project CARE (Child Advocacy Resources Expansion).
   Project CARE is conceptualized as one in which an extensive but fragmented array of existing resources is used as the basis for building an integrated system of services to problem families. The following areas are covered in the integrated services system: crisis services; detection and referrals; evaluation and remediation; followup; secondary services; prevention; and, finally, public awareness, which is a factor in the delivery of all services. In addition, the legal and procedural environment of services to troubled military families are being investigated through a policy study, and many dimensions of social services agency/military interaction are being explored through the piloting of DPW caseworker placement on military bases.

   The project is housed at Brooke Army Medical Center (BAMC) and Wilford Hall USAF Medical Center (WHMC). All five San Antonio military installations are participating in effective delivery of crisis services, detection and referrals, prevention, secondary services, and promotion of public awareness. Evaluation, remediation, and followup services are being provided by Brooke Army Medical Center and Wilford Hall USAF Medical Center in cooperation with the Bexar County Child Welfare Unit. Various community groups participate at all service levels. The need for bilingual-bicultural project components is being assessed, and all public awareness materials are being written in both Spanish and English.

After a period of systematic planning, the project will build on existing resources to develop a communitywide referral and resources network, so that the maximum number of cases are reported and all military families have equal access to available services.

The project, which is located in San Antonio, is administered by DPW Special Projects Bureau. Contact: Bernard J. Tallerico, Director, Social Work Service, Brooke Army Medical Center, P.O. Box 66, Fort Sam Houston, Texas 78234.

7. Family Resource Center (FRC).
The Family Resource Center Project (FRC) is attempting to lower the incidence of child abuse and neglect in Bernalillo County and the state of New Mexico. The FRC staff utilizes a multidisciplinary approach to provide the following intervention programs: therapy for abusing/neglecting families, parent education courses and groups for abusing/neglecting families, training and supervision of volunteers working with families, and consultation/training for a variety of agencies. Several evaluation/research strategies are being developed in phases to measure program objectives and assess effectiveness of intervention. FRC is intended as a model program for other areas of New Mexico and other states. Consequently, a variety of dissemination approaches such as seminars, workshops, publications, etc. are being used. A community advisory board composed of several agency representatives, professionals, and consumers advises FRC. Contact: Wayne Holder, Coordinator, Family Resource Center, 8016 Zuni S.E., Albuquerque, New Mexico 87103.

8. Suspected Child Abuse and Neglect (SCAN).
This project demonstrates the application of a volunteer-based model in the area of Protective Services to Abused and Neglected Children. The model was derived from a pilot project begun in 1972 in Pulaski County, Arkansas, utilizing trained volunteer lay therapists in child abuse and neglect cases. The model includes professional supervision of the volunteers, with consultation from socio-medical diagnostic teams, social service supervisors, and mental health professionals. There are four basic components to the model:

   a. Education (including public education and information);

   b. Diagnosis (including case finding, diagnostic and consultative services, and referral service);

   c. Treatment (including crisis intervention, lay therapists, legal service, followup, and parents anonymous); and,

d. Auxiliary Services (including coordination of existing services, development of day care and foster care, and in-service staff training).

This volunteer model is designed to assist those professional agencies who have prime responsibility for child protection by expanding their capability through the use of volunteers and through total community involvement in the problem. Contact: Dennis Castle, Arkansas Social Services, P.O. Box 1437, Little Rock, Arkansas 72203.

9. Child Protection Centers.
The East Baton Rouge Parish Child Protection Center is a 24-hour, 7-days-a-week, holiday and weekend service for investigation, treatment, and protection of children who have been abused or neglected, and a treatment resource for the parents. A telephone number is available to the community for the central reporting of these cases. The initial contacts with the family are made by a social worker and law enforcement officers to determine the nature and extent of abuse/neglect. The center provides medical, psychiatric, psychological, and social work evaluations of the parent or child in an effort to gain a comprehensive opinion on the situation. Dispositional conferences between the various disciplines operating at the Center jointly determine treatment plans.

The services available in the community and coordinated through the Center such as medical, educational, day care, homemaker, etc. are poured into the family in an effort to ameliorate the situation which precipated the abuse/neglect.

The local school board in coordination with the Center offers Education for Parenthood classes as a treatment resource. Community support for the project is obtained through an advisory council and the local Community Coordinated Child Care Council. Four additional state-funded Child Protection Centers are located throughout Louisiana. Contact: Ms. Jeanette Hendrix, Protective Services Specialist, Louisiana Division of Family Services, 755 Riverside N., P.O. Box 44065, Baton Rouge, Louisiana 70805.

IV. TEXAS OFFICES AND PROJECTS CONCERNED WITH CHILD ABUSE AND PROTECTIVE SERVICES

A. INDEX TO TEXAS DIRECTORY OF OFFICES AND PROJECTS

1. Abused Adolescent Programs.
Bexar County Juvenile Probation Department
Bexar County MH/MR Center
F.O.C.U.S. Project
Family Outreach Centers
San Antonio Child Abuse Council

San Antonio Child Abuse and Neglect
San Antonio Free Clinic
Texas Department of Public Welfare*

2. Abusive Parents Assistance.
   - Bexar County MH/MR Center
   - Central Texas Council of Governments
   - Child, Inc.
   - Children's Mental Health Services, Edinburg
   - Corpus Christi Child Abuse Council
   - Family Outreach Centers
   - Goldfarb Adult Development Clinic, Baylor College of Medicine
   - Parenting Guidance Center of Tarrant County
   - Parents Anonymous
   - Permian Basin Community Centers for MH/MR
   - Project CAN-DO
   - San Antonio Catholic Family and Children Services, Inc.
   - San Antonio Child Abuse Council
   - Tarrant Council Child Study Center
   - Texas Department of Public Welfare*
   - Texas Research Institute of Mental Health Services, The University of Texas Health Science Center, Houston

3. Advocacy Organizations.
   - Austin Child Abuse Council
   - Child Care '76, Inc.
   - Concern for Children in Placement
   - Edna Clark Foundation
   - El Paso Juvenile Judge
   - National Council of Juvenile Court Judges
   - Parents Anonymous
   - San Antonio Child Abuse Council
   - Texas Department of Community Affairs, Early Childhood Development Division
   - Texas Department of Public Welfare*
   - Texas Office of Youth Care Investigation

4. Child Abuse Conferences/Seminars.
   - Austin Child Abuse Council
   - Child Care '76, Inc.
   - Conference of Child Abuse Prevention Projects, San Antonio
   - Corpus Christi Child Abuse Seminar
   - El Paso Child Abuse Seminar
   - Mental Health Association of Dallas County Child Abuse Conference
   - Parents Anonymous
   - Region VI Resource Center on Child Abuse and Neglect
   - Tarrant County Child Study Center
   - Texas Association for Mental Health
   - Texas Department of Public Welfare*
   - Texas Medical Association Auxiliary

Texas State Bar Association
Trinity University
University of Texas Medical Branch at Galveston, Department of Pediatrics

5. Community Volunteer Projects.
   Austin Junior League
   Coastal Bend Child and Youth Developmental Center
   Family Outreach Centers
   Independent Order of Foresters
   Junior League of Tarrant County
   Tarrant County Red Cross Chapter
   Texas Department of Public Welfare*
   W.A.I.F. (Women Aiding Infants and Families, Inc.), San Antonio
   Women's Auxiliary to the American Medical Association
   Young Women's Christian Association

6. Coordination Programs.
   Child and Adolescent Mental Health Services of Dallas County
   Coordinated Child Care Council of Bexar County
   Mental Heath Association of Dallas County
   Region VI Resource Center on Child Abuse and Neglect
   San Antonio Child Abuse Council
   Texas Department of Community Affairs, Early Childhood Development Division
   Texas Department of Public Welfare, Special Projects Bureau, CARE, CANRED, CANRIS
   W.A.I.F., San Antonio

7. Crisis Intervention Programs.
   Bexar County MH/MR Services
   Brooke Army Medical Center
   Child and Adolescent Mental Health Services of Dallas County
   Dallas County Department of Child Welfare
   F.O.C.U.S.
   Family Outreach Centers
   Fort Bliss Army Base
   Fort Hood Army Base
   Fort Sam Houston
   Harris County Child Welfare Unit
   Kelly Air Force Base
   Lackland Air Force Base, San Antonio
   Parents Anonymous
   Project CAN-DO
   Randolph Air Force Base
   San Antonio Child Abuse Council
   San Antonio Crisis Center
   Southwest Medical Center
   Texas College of Osteopathic Medicine
   Texas Department of Public Welfare*
   U.S. Naval Hospital-Corpus Christi

8. Day Care Programs.
   - Child, Inc.
   - Brooke Army Medical Center
   - Greater Dallas Day Care Association
   - San Antonio E.O.D.C. Head Start
   - Texas Department of Public Welfare*

9. Foster Care Programs.
   - Child Welfare League of America's grant to Tarrant County Department of Child Welfare
   - Concern for Children in Placement
   - Dallas County Department of Child Welfare
   - El Paso Juvenile Judge Enrique
   - Harris County Child Welfare Unit
   - Migrant Child Abuse and Prevention Program
   - National Council of Juvenile Court Judges
   - San Antonio Catholic Family and Children Services, Inc.
   - San Antonio Child Abuse Council
   - Texas Department of Public Welfare*

10. Fund Raising.
    - Deep Texas Council of Governments
    - W.A.I.F., San Antonio

11. Homemaker Programs.
    - Dallas County Department of Child Welfare
    - Harris County Child Welfare
    - Texas Department of Public Welfare*

12. Judicial/Legal Programs.
    - Bexar County District Attorney's Office
    - Bexar County Legal Aide
    - El Paso Juvenile Judge
    - National Council of Juvenile Court Judges
    - Region VI Resource Center on Child Abuse and Neglect
    - University of Texas School of Law
    - San Antonio Child Abuse Council
    - Texas Department of Public Welfare*
    - Texas Office of Youth Care Investigation
    - Texas State Bar Association

13. Medical Programs.
    - Bexar County Pediatric Society
    - Brooke Army Medical Center
    - Goldfarb Adult Development Clinic, Baylor College of Medicine
    - Harris County Hospital District
    - Houston Hermann Hospital
    - U.S. Naval Hospital, Corpus Christi
    - Region VI Resource Center on Child Abuse and Neglect
    - Santa Rosa Medical Center, San Antonio
    - Southwest Medical Center

Texas College of Osteopathic Medicine
University of Texas Medical Branch at Galveston, Department of Pediatrics
Wilford Hall USAF Medical Center
William Beaumont General Hospital
Women's Auxiliary to the American Medical Association

14. Military Base Programs.
Bexar County MH/MR Demonstration Project
Brooke Army Medical Center (Brooke AFB, San Antonio)
Fort Bliss Army Base
Fort Hood Army Base
Fort Sam Houston Army Base
Kelly AFB (San Antonio)
Lackland AFB (San Antonio)
Randolph AFB (San Antonio)
U.S. Naval Base (Corpus Christi)

15. Minority Programs.
F.O.C.U.S. Project
Indian Migrant Program, O.C.D.
Office of Native American Programs
San Antonio Child Abuse Council
San Antonio Child Abuse and Neglect Project
Southwest Educational Development Laboratory, Early Childhood Division
Southwest M.H. Unit of Bexar County MH/MR Center
Texas Department of Public Welfare, Special Projects Bureau

16. Parent Education Programs.
Austin Independent School District
Baylor College of Medicine, Child Care '76, GRETA Parent Education Project
Bell County Central Counties Center for MH/MR Services
Bexar County MH/MR Services
Central Texas Council of Governments
Child and Adolescent Mental Health Services of Dallas County
Corpus Christi Child Abuse Council
Family Outreach Centers
F.O.C.U.S. Project
Goldfarb Adult Development Clinic, Baylor College of Medicine
Human Development Center of Lubbock
Parenting Guidance Center of Tarrant County
Permian Basin Community Centers for MH/MR
Project CAN-DO
San Antonio Child Abuse Council
Southwest Educational Development Laboratory, Early Childhood Division
Tarrant County Red Cross Chapter
Texas Department of Community Affairs, Early Childhood Development Division
Texas Department of Public Welfare

17. Police Department Programs.
San Antonio Police Department

18. Public Health Nurse Programs.
Houston Hermann Hospital

19. Public Education Programs.
Austin Child Abuse Council
Central Texas Council of Governments, Project U.C.A.N.
Child Care '76
Channel 8 T.V., Dallas
Dallas Community College District
Dallas County Department of Child Welfare
Family Outreach Centers
Harris County Child Welfare Units
Independent Orders of Foresters
Project Lift-A-Finger
Southwest Educational Development Laboratory
Texas Department of Public Welfare, Public Campaign for the Prevention of Child Abuse
W.A.I.F., San Antonio

20. Public School Programs.
Austin Independent School District
Baylor College of Medicine, GRETA, Child Care '76 Parent Project
Child Abuse Prevention Project, Houston
Consortium C, Houston
Corpus Christi Public School System
El Paso Public School System
Project Lift-A-Finger
Region IV Education Service Center
San Antonio Child Abuse Council

21. Research and Evaluation Programs.
Carswell AFB, Fort Worth
Region VI Resource Center on Child Abuse and Neglect
San Antonio Child Abuse Council
San Antonio Child Abuse and Neglect Project
Southwest Educational Development Laboratory
Study of Healthy Families, Timberlawn Institute of Dallas
Tarrant County Child Study Center
Texas Department of Public Welfare, Project CARE, CANRED, CANRIS

22. Screening Instruments.
Alexander Zaphiris Method, Tarrant County Department of Child Welfare
Child Welfare League of America's Model for Decision Making for Removal
M.M.P.I., San Angelo MH/MR Center for Greater Texas, UTMB at Galveston

Office of Child Development "Is the Home Safe Checklist," Bexar County MH/MR Center
Texas Department of Public Welfare, Diagnostic Intake Assessment Instrument

23. Speaker's Bureau.
Dallas County Department of Child Welfare
San Antonio Child Abuse Council
Texas Department of Public Welfare*
University of Texas Health Science Center, San Antonio

24. Training Programs.
Austin Independent School District
Bexar County Legal Aide
Brooke Army Medical Center
Child Abuse Prevention Project, Houston
Child and Adolescent Mental Health Services of Dallas County
Child Welfare League of America's grant to Tarrant County Department of Child Welfare
Community Guidance Center of San Antonio
Dallas County Department of Child Welfare
Harris County Child Welfare Unit
Human Development Center of Lubbock
National Center on Child Abuse and Neglect
Project Lift-A-Finger
Region IV Education Service Center
Region VI Resource Center on Child Abuse and Neglect
San Angelo MH/MR Center for Greater West Texas
San Antonio Child Abuse Council
San Antonio College
Texas College of Osteopathic Medicine
Texas Department of Public Welfare, Continuing Education Bureau
Texas Research Institute of Mental Health Services
Texas State Bar Association
Tyler Department of Public Welfare
Travis County Department of Child Welfare
University of Texas Health Science Center at Houston
University of Texas Health Science Center at San Antonio
University of Texas Medical Branch at Galveston
University of Texas School of Law

25. Treatment Programs.
Bell County Central Counties Center for MH/MR Services
Bexar County MH/MR Center
Child and Adolescent Mental Health Services of Dallas County
Children's Mental Health Services of Edinburg
Community Guidance Center of San Antonio
Deep East Texas Regional MH/MR Services
F.O.C.U.S. Project
Family Outreach Centers
Human Development Center of Lubbock

MH/MR Regional Center of East Texas
Migrant Child Abuse and Prevention Program
Permian Basin Community Centers for MH/MR
Project CAN-DO
San Angelo MH/MR Center for Greater West Texas
San Antonio Catholic Family and Children Services, Inc.
San Antonio Child Abuse Council
Tarrant County Child Study Center
Texas Department of Public Welfare*
University of Texas Health Science Center at Houston
University of Texas Medical Branch at Galveston

26. Univeristies and Colleges:
Baylor College of Medicine
Dallas Community College District
Region VI Resource Center on Child Abuse and Neglect
San Antonio College
Southwest Medical Center
Texas College of Osteopathic Medicine
Texas Southern University
University of Houston
University of Texas at El Paso
University of Texas School of Law
University of Texas Health Science Center, Houston
University of Texas Health Science Center, San Antonio
University of Texas Medical Branch at Galveston, Department of Pediatrics

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*Texas Department of Public Welfare provides these services through its regional and local county welfare offices. For further information about services in specific locations, contact either the local county offices or the regional child abuse coordinators.

B. DIRECTORY OF OFFICES AND PROJECTS

1. Texas Department of Public Welfare (Statewide Programs in Child Abuse)
DPW is responsible for the delivery of traditional protective services to children who are abused, neglected, in need of supervision, truants or runaways, and unmarried mothers. Services include receipt of referrals, investigation of referrals, court work if necessary, casework with the child and his family in the child's home, foster or other substitute care as appropriate, protective day care, adoption services, and information and referrals. Comprehensive programs exist in all DPW local offices, administered by 10 regional offices. Each office has a Protective Services Unit that gives priority to child abuse reports.

The local Texas DPW's also utilize the local community Mental Health Centers for referrals for diagnostic, evaluation, and treatment services of children and parents involved in child abuse.

Other programs include assistance to parents in obtaining legal counsel. Twenty-eight million dollars was budgeted for the Texas DPW for fiscal year 1975 to provide for the doubling of Protective Services staff (from 707 to approximately 1483) and for training of the staff by national experts in the field of child abuse. Budget requests for the coming biennium include expansion of homemaker and day care programs and for treatment and work with community-based groups including Child Abuse Councils and Parents Anonymous.

(The Continuing Education Bureau)
The Bureau is responsible for training of child abuse personnel and increasing their knowledge, awareness, and skills in the problems dealing with child abuse. It has developed statewide training in local offices for caseworkers in Protective Services in the areas of issues in foster parenting, separation trauma, sexual abuse, etc. The Bureau has sponsored Dr. Leontine Young for many local offices. Contact: Bobbie M. Matthews, Texas State DPW, Fountain Park Plaza, 3000 IH-35, Austin, Texas 78704.

(Project CARE (Child Advocacy Resources Expansion))
This project has been conceptualized as one in which an extensive but fragmented array of existing resources is used as the basis for building an integrated system of services to problem families. The following areas will be covered in the integrated services system: crisis services; detection and referrals; evaluation and remediation, followups; secondary services; prevention; and, finally, public awareness, which is a factor in the delivery of all services. In addition, the legal and procedural environment of services to troubled military families will be investigated through a police study, and many dimensions of social services agency/military interaction will be explored through the piloting of DPW caseworker placement on military bases. Contact: Charla McCoy, Texas Department of Public Welfare, John H. Reagan Building, Austin, Texas 78701.

(Project CANRED (Child Abuse and Neglect Resources Demonstration))
The Texas DPW project is funded by HEW (OCD) under the DPW Special Projects Bureau for two and a half years. The goal of the project is to develop a comprehensive and integrated multidisciplinary service delivery and support system. The objectives are in three action areas:

a. to evaluate and improve current DPW identification services;

b. to identify specific services needed and to improve the social and emotional functioning of abused and neglected children and their families; and,

c. to assess and increase the capacity of local communities to provide services through the systematic delineation and coordination of current and potential services providers.

The project will review relevant legislation, review existing child abuse and neglect projects, evaluate Project CANRIS data, establish advisory committees, develop liaisons, provide consultants, evaluate the Public Information campaign needs, develop instruments for needs and resource assessment, identify service resource gaps, design community models for development of service resources, develop model service delivery agreements, and develop recommendations for departmental training and staff development. Contact: Janne B. Dinges, Director, Project CANRED, Fountain Park Plaza, 3000 IH-35, Austin, Texas 78704.

(Project CANRIS (Child Abuse and Neglect Reporting Information System))
This project was legislated by the Texas Legislature (Family Code Section 34.06) which is a State Central Child Abuse Registry. It provides for a computerized central reporting system to gather definitive statistics about the frequency and nature of child abuse and neglect and to develop a centralized file of perpetrators of abuse and neglect.

(Public Campaign for the Prevention of Child Abuse)
This program of the Special Projects Bureau is charged with the responsibility to develop awareness in parents and potential parents of child-rearing practices and encourage potential abusers to seek help. The project is a comprehensive educational program that has reached all areas of the state to inform as many Texas citizens as possible that child abuse does exist, that the families of abused children usually can be helped, and that every citizen does have a role in combating child abuse. The Public Education campaign particularly stresses that Texas law requires anyone knowing or suspecting that injury is being done to a child through abuse or neglect to report and that the law does provide immunity from liability to those reporting in good faith. Media materials used in this program include specially prepared public service announcements for radio and television (10, 30, and 60-second filmed spots dealing with all aspects of child abuse). The campaign stresses a statewide toll free WATS telephone system which can be used by anyone in Texas wishing to report suspected incidences of child abuse and neglect. The WATS Hotline is manned 24 hours a day by social work personnel and referrals are made to local offices for follow-up and disposition. The campaign also includes a Speaker's Bureau of professionals to speak to community groups interested

in different aspects of child abuse. Also, in cooperation with the Texas Press Association, the campaign presents featured daily and weekly press articles dealing with child abuse. The project has prepared packets for distribution to civic leaders to enlist their support in prevention of child abuse programs. A general public information fact sheet is sent to the general public describing Texas laws on child abuse, how to recognize child abuse, and what to do about it when recognized. The Project has also developed Public Education Slide Presentations aimed at various audiences including professional groups who come in frequent contact with children (i.e., "Wednesday's Children," "A Special Kind of Patient" for the medical community, "Children in Danger" for teachers and day care operators, and slides for young parents). Contact: Donald Wilson, State Coordinator, Child Abuse Project, State DPW, John H. Reagan Building, Austin, Texas 78701.

(Special Projects Bureau)
The Bureau serves as the research and development arm of DPW that is also primarily reponsible for the development of child abuse prevention projects. The division is in the process of developing DPW-administered internships (similar to the medical profession) for child protection workers. Project CANRED, CARE, CANRIS, and the Public Campaign for the Prevention of Child Abuse are all under the auspices of this division. The Bureau works closely with the University of Texas at Austin to undertake specific programmatic research and evaluation of the Department's child abuse projects and programs. Contact: Charla McCoy, Project Director, Special Projects Bureau, Fountain Park Plaza, 3000 IH-35, Austin, Texas 78700.

Any person who has reason to suspect child abuse or neglect may make a report by calling the Department of Public Welfare's statewide hotline number: 1-800-292-4500. This number is toll free and maintained 24 hours a day. Persons may also call their nearest county Department of Public Welfare Office or county Child Welfare Unit (listed in the local telephone directory) to be directed to the appropriate Child Protective Services staff.

2. Austin Child Abuse Council.
This council consists of concerned citizens and representatives of various community agencies. Activities include public awareness and community education programs as well as a conference on alternatives available to families offered by the Austin community, cosponsored with the Austin Jr. League and Austin Child Care '76. Contact: Travis County Child Welfare Unit, 3000 S. IH-35, Austin, Texas 78704

3. Austin Independent School District.
   Under the auspices of the Office of Student Development, this school district has adopted guidelines for school principals to use in reporting suspected abuse and neglect. Further, the school district utilizes the Texas Department of Child Welfare to help investigate and follow-up suspected abuse and neglect cases. The School District conducts training of school personnel in identifying and reporting abuse/neglect. Parenting programs are also being held at some of the community schools. Contact: Luisa G.G. Sanchez, Visiting Teachers, Austin Independent School District, 6101 Dillard Circle, Austin, Texas 78752.

4. Austin Junior League.
   The League provides volunteer services relating to child abuse and neglect including public education programs for local high school classes and working with the Austin Child Abuse Council and Austin Child Care '76 in cosponsoring a conference on alternatives for parents.

5. B.A.M.C. (Brooke Army Medical Center).
   This program of the Bexar County Mental Health/Mental Retardation and Bexar County Department of Public Welfare provides a crisis line/nursery, physician consultation, and staff training of physicians at the University of Texas Medical School in San Antonio. The military base provides comprehensive casework, evaluation, remediation, and follow-up services. Contact: Mr. Ben Tallerico, Brooke Army Medical Center, Social Work Services, San Antonio, Texas 78234.

6. Baylor College of Medicine.
   Through its Goldfarb Adult Development Clinic, the College focuses on prevention of child abuse and neglect by providing parenting information to pregnant adolescents who keep their babies. A crisis hotline is available for parents to receive help once they are at home with their children. In addition, Baylor, with subcontracts to Child Care '76, Inc., and GRETA, has funding from the Texas Department of Public Welfare, Texas DCA-Division of Early Childhood Education, and TEA to develop a series of twelve videotapes and curriculum guides on parenting for junior high school nonpregnant youth in the public school system. The projected completion date is February 1977. Contact: Dr. Peggy B. Smith, Baylor College of Medicine, Houston, Texas 77025.

7. Bell County Central Counties Center for MH/MR Services.
   The Center cooperates with Project CAN-DO, administered under the Central Texas Council of Governments for prevention, education, and rehabilitation services to abusing parents and abused children. The Center also provides diagnostic, evaluation, and treatment services for the Department of Child

Welfare Protective Services.

8. Bexar County District Attorney's Office.
The Office cooperates closely with the Texas Department of Child Welfare in the prosecution of child abuse cases. It also provides consultation on legislative recommendation in the area of child abuse.

9. Bexar County Juvenile Probation Department.
The Department cooperates with the local Community Mental Health Center in referring adolescents for Personal Growth groups.

10. Bexar County Legal Aid.
This organization provides speakers for the Child Abuse Speaker's Bureau of the Texas Department of Child Welfare and provides education sessions with law students and local students in the ramification of the legal issues involved in child abuse and in the role of the court.

11. Bexar County Mental Health/Mental Retardation Center.
The Center administers the FOCUS program (See F.O.C.U.S.). It is also under a one-year demonstration project to utilize a team approach in the treatment of the battered child. The Family Services Division of the Center provides counseling to abusive families. The Center is also administering a three-year demonstration project to evaluate how five military bases cooperate in providing protective services to children from military families. Contact: Director, 611 North Flores, San Antonio, Texas 78205.

12. Bexar County Pediatric Society
The Society cooperates in the detection, referral, and reporting system of child abuse.

13. Central Texas Council of Governments.
The Council has been awarded an H.E.W. grant for a demonstration project in Belton, and also conducts an education and public information program, U.C.A.N. (Understanding Child Abuse and Neglect). Contact: c/o Jefferson County Child Welfare, 215 Franklin Street, Beaumont, Texas 77701.

14. Child Abuse Council of Tarrant County.
Contact: Tarrant County Child Welfare Unit, 1216 Pennsylvania Street, Fort Worth, Texas 76102.

15. Child Abuse Prevention Center of Texas.
Contact: Linda Corbell, Director, 9102 Jackwood, Houston, Texas 77936.

16. Child, Inc.
    This organization provides Head Start programs throughout Austin. It receives referrals for abused and neglected children, provides social services to parents as well as child abuse and neglect training for staff, and has just received a grant to fund child development centers located within several Austin high schools. Contact: Ella Salazar, Child, Inc., 8186 53rd Street, Austin, Texas 78723.

17. Child and Adolescent Mental Health Services of Dallas County.
    This program of the Dallas County Mental Health/Mental Retardation Center provides crisis intervention, outpatient, hospitalization, and partial care, a psycho-educational program, and consultation and education services to child abuse referrals. The Center cooperates closely with the Dallas County Department of Child Welfare in diagnostic, evaluation, and referral services. The C&E team provides preventive training to primary and secondary caretakers of children and adolescents. Contact: Dr. Frank Lewis, Director, 329 Centre Street, Dallas, Texas 75218.

18. Child Care '76, Inc.
    This organization provides advocacy for childcare-related issues including childcare licensing standards, and other community, state, and national legislation and policies affecting children. It is presently conducting forums on issues relating to children throughout Texas and is also working with Baylor College of Medicine and GRETA to develop a multimedia parenting curriculum for seventh grade students to be used primarily in the public schools. Contact: Marie Oser, Director, 6711 Hornwood #269, Houston, Texas 77074.

19. Child Care Council of Coastal Bend.
    Contact: Nueces County Child Welfare Unit, 1901 Trojan, Corpus Christi, Texas 78416.

20. Child Welfare League of America.
    The League has selected Travis County Child Welfare in Austin as a pilot project site for a foster parent training demonstration model (August-December, 1975).

21. Children's Mental Health Services of Edinburg.
    This program provides psychiatric and psychological treatment for abusive and neglectful parents and group therapy for borderline abusing parents. Contact: Xavier Martinez, Children's Mental Health Services, Edinburg, Texas 78539.

22. Children's Protective Law Conference.
This is a joint project of the Texas Department of Public Welfare and the University of Texas School of Law. The Conference is oriented primarily for judges and attorneys across the state with responsibilities in the area of child abuse and neglect.

23. Community Guidance Center of Bexar County.
The Center is involved in the education and training of professionals in the area of child abuse. It also provides psychiatric and social evaluation and treatment of child abuse from referrals. Contact: Dr. Al Serrano, Executive Director, 2135 Babcock Road, San Antonio, Texas 78229.

24. Concern for Children in Placement.
These are local advocacy groups for children's legal rights in placement. They develop inservice materials and informational resources for courts and volunteers to insure the judicial review of children who are unnecessarily institutionalized or placed in foster care. They are sponsored by the National Council of Juvenile Court Judges and funded by the Edna Clark Foundation. The groups concentrate on providing protection, diagnosis, medical, and pscyhological treatment of children who are temporary or permanent wards of the court. El Paso juvenile Judge Enrique is one of twelve participating judges in this research project. Contact: Virginia Cain, Project Coordinator, Concern for Children in Placement, National Council of Juvenile Court Judges, P.O. Box 8000, Reno, Nevada 89507.

25. Conference of Child Abuse Prevention Projects.
These statewide quarterly conferences, held in Laredo, Texas, exchange program and project information of state and local agencies involved in the area of child abuse. The conferences are coordinated by DPW.

26. Consortium C.
Under a federal grant from the Office of Education, audio-tutorial packages for child abuse awareness in the public schools ("Lift-A-Finger") have been developed and are presently being field tested in Texas school systems. Four series are available: for teachers, for administrators, for high school students, and for community use. Contact: Stuart B. McKenty, Consortium C, 1750 Seamist, Houston, Texas 77018.

27. Coordinated Child Care Council of Bexar County.
This is a child abuse committee responsible for the coordination of applications for local, state, and federal monies for child care services.

28. Corpus Christi Child Abuse Seminars.
In cooperation with several agencies (Texas Department of Public Welfare, Coastal Bend Child and Youth Development Council, and the Nueces County Medical Society), this annual seminar utilizes the services of national experts in the field of child abuse.

29. Corpus Christi Child Abuse Council.
The Council conducts "Consciousness-Raising" groups for parents who abuse their children in cooperation with Nueces County Mental Health/Mental Retardation Center.

30. Council on Adoptable Children.
Contact: William Bennett, Chairperson, 618 Meadowlane, San Antonio, Texas 78209.

31. Dallas Community College District.
The District presents a series of evening sessions on abuse and neglect which is open to the public at no cost.

32. Deep East Texas Council of Governments.
The Council is making available $21,000 for Emergency Shelter for abused and neglected children.

33. Deep East Texas Regional Mental Health/Mental Retardation Services.
This community mental health center cooperates with the local Texas Department of Child Welfare in the diagnosis, evaluation, and treatment of abused children and their families.

34. El Paso Child Abuse Seminar.
This seminar is sponsored by the Junior League, Department of Public Welfare, Y.W.C.A., Women's Auxiliary to the American Medical Association, the William Beaumont General Hospital, and the University of Texas at El Paso Department of Education. Contact: John K. Miller, Chief of Social Work Service, William Beaumont General Hospital, El Paso, Texas 79999.

35. El Paso Public School District.
Under the auspices of the Department of Support Services, the school district conducts meetings with school nurses, principals, and counselors around their responsibilities in reporting child abuse.

36. Family Outreach Centers.
These Centers are sponsored by the National Council of Jewish Women and the Texas Department of Public Welfare to provide professionally trained volunteers to aid in prevention of child abuse and neglect through education of the community, direct family support programs, and recruitment of foster and adoptive parents.

Dallas County Child Welfare coordinates centers in Richardson (699 Arapaho Central), Irving (125 Hastings) and Farmers Branch (104 Valley View Square). Additional services include parenting skills groups and teenage groups. Contact: Dorothy R. Coyle, Family Outreach Coordinator, Dallas County Child Welfare, Dallas, Texas 75202.

Harris County Child Welfare coordinates a center in Houston. They have recently organized two therapy groups, one for teenage girls and the other for their parents. Contact: Jennifer Stansbury, Family Outreach Center, 8880 Beaumont, Houston, Texas 77035.

Family Outreach Centers are also in operation in Beaumont, El Paso, and San Antonio.

37. F.O.C.U.S. (Families of Children Under Stress).
This treatment program at the Southwest Mental Health Unit of the Bexar County MH/MR Center serves primarily a catchment area of 75 percent Mexican-Americans. The objectives of the special project are to reduce the number of battered children who may become delinquent; to identify the number of families who may need treatment for child abuse; to examine factors in abusive families that can be changed to make their family dynamic socially healthy; to provide a 24-hour rescue and life-line crisis intervention service; educate the clients in the knowledge and effective use of community agencies and resources; provide insight therapy for parents; sponsor human development, behavior management, and parent education groups; and conduct adolescent groups for new models for child raising and family/social functioning. Contact: Director, 611 North Flores, San Antonio, Texas 78205.

38. Harris County Hospital District.
The District identifies child abuse and neglect cases and refers them to Harris County Child Welfare for evaluation. Contact: Mary Helen Pritchett, Social Worker, Pediatrics, Harris County Hospital District, Houston, Texas 77001.

39. Houston Hermann Hospital.
The Social Services Department aids in coordinating existing community resources to aid families with detected child abuse. The hospital also utilizes public health nurses in high-risk homes.

40. Human Development Center.
Located in Lubbock, Texas, the Center provides family and individual therapy for referrals of child abuse from the Department of Child Welfare. The Center also provides C&E services to DPW staff and to the general public on the preventive aspects of communicating and parenting skills. The Center uses W. Becker's

"Parents are Teachers" and Dr. Thomas Gordon's "Parent Effectiveness Training" as a basis for their parent education groups and workshops in behavioral management courses.

41. Independent Order of Foresters.
This civic group has developed a public education film entitled "Fragile, Handle With Care," narrated by Bill Cosby, that is made available at no cost for community use in understanding the issues involved in child abuse. Contact: Local representative or Grant Wheeler, 4447 North Central Expressway, Suite 405, Dallas, Texas 75205.

42. Local Radio and Television Documentaries.
Numerous local radio and television stations have developed panels and public awareness programs concerned with child abuse. Channel 8 of Dallas produced a documentary on child abuse entitled: "Children in Despair."

43. Mental Health Association of Dallas.
The Association sponsors an annual National Child Abuse Seminar with national experts in the field of child abuse to train professionals and paraprofessionals in the most current knowledge of the issues and problems of dealing with child abuse. Contact: Ms. Katherine Reed, Executive Director, 2500 Maple Avenue, Dallas, Texas 75201.

44. Military Base Child Abuse or Protection Councils.
In cooperation with the Texas Department of Public Welfare, comprehensive casework and supportive services are available at the following military bases:

Fort Hood Army Base (also has Parents Anonymous Chapter). Contact: Captain Kenneth Scroggs, Social Work Officer, Department of Army Headquarters III Corps, Ft. Hood, Texas 76544;

Fort Bliss Army Base, El Paso Infant and Child Protection Council. Contact: L.T.C. John K. Miller, MSC, Chief, Social Work Service, William Beaumont General Hospital, Fort Bliss Army Base, El Paso, Texas 79916;

Fort Sam Houston Army Base. Contact: Child Protection Council, Brooke Army Medical Center, Fort Sam Houston Army Base, San Antonio, Texas 78234;

Lackland Air Force Base. Contact: Child Protection Council, Wilford Hall USAF Medical Center, Lackland Air Force Base, San Antonio, Texas 78236;

U.S. Naval Base at Corpus Christi. Contact: Child Abuse Council, U.S. Naval Hospital, Department of Pediatrics, Corpus Christi, Texas 78419.

All participate in a demonstration project of effective delivery of crisis service, detection, referral, prevention, secondary services, and public awareness.

45. MH/MR Regional Center of East Texas.
This community mental health center in Tyler, Texas, provides parent counseling for abused parents and has a staff psychologist specializing in the treatment of abused children and families. Contact: Gary Smith, Executive Director, Parent Counseling, 305 S. Broadway, Tyler, Texas 75701.

46. Migrant Child Abuse and Prevention Program.
Administered by the Texas Migrant Council, this program endeavors to attack the problems of abuse and neglect among Texas migrants. Emphasis is on the use of the extended family in the treatment of abuse and neglect and in obtaining foster families for migrant children who have been removed from their homes. Contact: Abdon Ibarra, Director, P.O. Box 917, Laredo, Texas 78040.

47. National Center on Child Abuse and Neglect.
The Center, under the Office of Child Development (HEW Regional Offices), is responsible for administering federal child abuse demonstration grants. The Center will also conduct five-day training sessions for professionals in the issues involved in the detection, treatment, and prevention of child abuse. The Center's project is contracted by HEW in cooperation with the Children's Bureau staff, Indian Migrant Program of the Office of Child Development, and the Office of Native American Programs. Contact: Douglas Besharov, Director, National Center on Child Abuse and Neglect, Office of Child Development, Washington, D.C. 20013.

48. National Council of Jewish Women.
In connection with the Mental Health Association of Dallas County, Dallas County Department of Public Welfare, and the Family Outreach Project, this group is planning, in conjunction with Parents Anonymous of Dallas, an inservice training program on recognizing and handling cases of abuse for the 15 school districts in Dallas County. Contact: Lorraine Sulkin, District Representative, c/o Dallas County Child Welfare, 6434 Maple Avenue, Dallas, Texas 75235.

49. Parenting Guidance Center of Tarrant County.
This is a joint program of Tarrant County DPW and the Junior League of Fort Worth to provide multifacet resources and support to help abusive parents. Contact: Dr. Ewing Cooley, 1409 Summit, Fort Worth, Texas 76102.

50. Parents Anonymous.

This self-help group offers supportive services, consultation, and therapeutic services for abusive parents. Pasadena and Houston chapters also operate a Crisis hotline and are sponsored by members of the Texas Society of Adlerian Psychology. Contact: Terry B., 13911 Locklain, Houston, Texas 77001. The Dallas chapter is sponsored by the Greater Dallas Day Care Association. Contact: Greater Dallas Day Care Association, 3107 Routh Street, Dallas, Texas 75201. Other Chapters include: Austin-Contact: Child Inc., 1111 Montopolis, Austin, Texas 78741; El Paso-Contact: Jim H., 9025 Diana, El Paso, Texas 79904.

In addition, the national organization sponsors a nationwide conference (cosponsored in 1976 with Dallas Parents Anonymous) and offers help in setting up a PA Chapter. Contact: Bobby G., or call toll free number 1-800-421-0353.

51. Permian Basin Community Center for MH/MR.

The Center provides outpatient family and parent education groups, and cooperates with DPW for diagnostic, evaluation, and treatment of abused children and their families. Contact: Beverly Acker, Director, 3701 North Big Spring, Midland, Texas 79701.

52. Project CAN-DO.

The goal of this project, which is administered by the Central Texas Council of Governments, is to insure a continuum of services from prevention, to identifying, to diagnostic evaluations, to treatment, through follow-up for both the child-abusing adult and the child that has been abused. The project is an interdisciplinary team treatment approach with the focus on treating and maintaining the family as a unit. The project serves seven central counties: Coryell, Lampasas, Mills, Bell, Hamilton, Milam, and San Saba. Contact: Jack Knox, Director, Project CAN-DO, P.O. Box 729, Belton, Texas 76513.

53. Project Lift-A-Finger.

Administered by Region IV Educational Service Center, this project presents audio-visual slide programs for school administrators, teachers, citizens, and students on the issues of child abuse. (See Consortium C.)

54. Region IV Education Service Center.

The Center provides inservice training for staff in the Corpus Christi Public School System. (Consortium C materials, Project Lift-A-Finger.)

55. Region VI Resource Center on Child Abuse and Neglect.
    The University of Texas School of Social Work in Austin has a three-year grant through the Child Abuse and Neglect Prevention and Treatment Act to provide training, technical assistance, and resources to the five states in Region VI, including Texas. Contact: Donna Scott, RCCAN, Center for Social Work Research, School of Social work, The University of Texas at Austin, Austin, Texas 78712.

56. San Antonio Catholic Family and Children Services, Inc.
    This program provides individual and family counseling and casework services to dependent and neglected children in foster homes and institutions, and provides counseling for unwed mothers and potentially abusive parents.

57. San Antonio Child Abuse and Neglect Project.
    This is a three-year project administered by MANCO (Mexican-American Neighborhood Civic Organization) to investigate linkages between alcohol and drug abuse and the abuse and neglect of children. The Texas DPW (Special Projects Bureau) serves as consultant in the research and evaluation of this project. Contact: Dario Chapa, Director, 118 Broadway, Suite 327, San Antonio, Texas 78205.

58. San Antonio Child Abuse Council.
    This Council is made up of 22 member agencies and any interested citizens. Included is the Director of the Protective Services Agency and the heads of three hospital-based child abuse teams in the city. The Council's steering committee meets monthly and guides the program of six committees (Therapeutic, Education, Legislation, Media, Research, and Central Registry for Childhood Trauma). Some innovative approaches being utilized are:

    a. using the clergy in the emergency rooms as a "parent aide;"

    b. a growth group for adolescents who have been abused or neglected through value-clarification games helps them to investigate their values about family, marriage, and personal relationships;

    c. a 24-hour crisis phone line with referrals to therapeutic services;

    d. a 36-hour elective for preclinical medical and nursing students at the University of Texas Health Science Center at San Antonio;

    e. a 12-hour curriculum for caseworkers, day care workers, nurses, mental health workers, teachers, and counselors on Child Abuse Management (a certificate course held in conjuction with the local junior college);

f. a housing bureau that will reach women alone, divorcing, or with children who want to share a house and/or day care responsibilities with another adult (in planning stage with the San Antonio National Organization for Women and the YMCA;

g. the recommendation of legislation, appropriate amendments, and lobbies for passage of statewide and national legislation pertaining to child abuse.

h. the development of therapeutic approaches for training in the community;

i. living courses in the public high schools;

j. the evaluation of the effectiveness of a centralized trauma registry;

k. the provision of dollars for transportation of clients; and,

l. the development of standards and principles of good foster care.

Four hundred and fifty people attended a conference in March 1974 held by the Council on the Cycle of Abuse--Treatment for the Family. This was the first such conference on local problems on child abuse for the professional community and a Public Forum on "Rights of Children--A Growing Concern" was part of the formal program with a professional workshop on "Approaches to Treatment." Contact: Myra Laplin, Director, Route 2, Box 872 BB, San Antonio, Texas 78228.

59. San Antonio College.
This community junior college cooperates with the Department of Early Childhood Education in educating and training day care personnel in the community and in assisting families in crisis. The college provides child abuse material in their pscyhology and sociology curriculum. Their department of Adult and Continuing Education sponsors a 12-hour certificate on Child Abuse Management.

60. San Antonio Crisis Center.
The Center provides crisis intervention, information, counseling, and referrals to abusive parents in distress.

61. San Antonio E.O.D.C. Headstart.
This child development center accepts victims of child abuse for day care upon referral.

62. San Antonio Free Clinic.
This clinic provides Personal Growth groups for adolescents coming from abusive or neglectful families. Contact: Al Carlozzi, San Antonio Free Clinic, San Antonio, Texas 78219.

63. San Antonio Police Department.
Police-cadet training programs on the family dynamics of child abuse and child abuse management are provided. The Department works closely with referrals to Bexar County DPW.

64. San Angelo MH/MR Center for Greater West Texas.
This Community Mental Health Center cooperates fully with the Texas DPW in diagnostic, evaluation, and treatment referrals of child abuse victims and their families. It provides diagnostic reports to courts of DPW cases involving child abuse. The Center utilizes the Minnesota Multiphasic Personality Inventory (MMPI) to provide information concerning the parents emotional stability, and also cosponsors (with the TDPW) workshops in relating to the establishment and delivery of child abuse services.

65. Santa Rosa Medical Center (San Antonio).
The social services department specializes in assisting families in receiving services from community resources aiding in problems of child abuse. Contact: Dr. Howard Britton, Chairperson, Pediatrics Department, San Antonio, Texas 78285.

66. Society for Abandoned and Neglected Children (SANCI).
Contact: SANCI, 3800 Mockingbird Lane, Blanton Tower, Suite 800, Dallas, Texas 75235.

67. Study of Healthy Families.
In this Family Systems research, variables are being studied for their correlation with positive outcomes in treatment of disturbed adolescents. Abuse and neglect is one of the variables under study. Contact: Jerry M. Lewis, MD, Director of Research and Training, Timberlawn Foundation, Dallas, Texas 75221.

68. Southwest Educational Development Laboratory.
The Laboratory has funding from the Office of Education to develop bilingual parenting materials which are presently available to interested sites for field testing. (Available in both English and Spanish.) These include parent training packages with audio-visual materials. Also available are public services announcements on parenting; one deals with parenting under stress. The Parenting Materials Information Center (PMIC) maintains a collection of all known publications relating to parenting, including the area of child abuse and neglect. A technical service provides a search of requested topics and abstracts of those materials in the Center. The system can be implemented in other places. SEDL hopes to receive further funding to begin a major media campaign and develop parenting materials specifically con-

cerning child abuse and neglect. Contact: Dr. David Williams, Director, Early Childhood Division, 211 East 7th Street, Austin, Texas 78701.

69. Southwest Medical Center, University of Texas Health Sciences Center at Dallas.
The Center provides health care services to abused and/or neglected children and consultation to individuals and community groups including Parents Anonymous. It also provides ongoing education and training for medical students and staff and social work staff. Contact: Harriet Stambaugh, Director of Social Services, Dallas, Texas 75235.

70. Tarrant County Child Study Center.
The Center cooperates with referrals from Tarrant County DPW in providing therapy for abused children and their parents. Contact: Director, 1300 W. Lancaster, Fort Worth, Texas 76102.

71. Tarrant County Hospital District.
The District cooperates with the Texas DPW in identifying, reporting, and referring families of neglected and abused children to social services and supportive community resources.

72. Tarrant Red Cross Chapter.
The Chapter provides for training classes (preventive parent education) in child care skills. Contact: Director, 6640 Camp Bowie Boulevard, Fort Worth, Texas 76116.

73. Texas Association for Mental Health.
The Association sponsors an annual conference and workshops on the preventive aspects of child abuse.

74. Texas College of Osteopathic Medicine.
The School provides a hotline for reporting suspected child abuse cases. It also utilizes Texas DPW educational films directed to physicians in training their staff.

75. Texas Medical Association Auxiliary.
This organization has made child abuse and neglect a major program priority for supporting local and statewide efforts of all groups.

76. Texas Department of Community Affairs (Early Childhood Development Division)
The Division has funded three rural demonstration projects providing parent education as a preventive approach in Fallas, Lamar, and San Patricio Counties. Also, it has provided Pierre, the Texas Pelican, a newsletter concerning growth, and child development, to 156,000 first-time parents since 1973. In cooperation with the Texas Education Agency and DPW, they have also funded the Baylor College of Medicine, Child

Care '76, Inc., and GRETA Project to develop a parenting curriculum for seventh graders. Contact: Jeanette Watson, Director, Austin, Texas 78711.

77. Texas Office of Youth Care Investigation.
The Office receives and investigates reported complaints of child abuse, neglect, and other mistreatment of minors against the Texas Department of Public Welfare, Texas Rehabilitative Commission, Texas Department of Mental Health and Mental Retardation, and the Texas Youth Council. It is funded by the Criminal Justice Division of the Governor's Office. Contact: Jim Kester, Office of Youth Care Investigation, Executive Office Building, 411 W. 13th Street, Austin, Texas 78701.

78. Texas Research Institute of Mental Health Services (TRIMS).
The Institute provides counseling to abusive and neglectful parents and offers training to agency personnel. Contact: Drs. Rita and Blair Justice, TRIMS, University of Texas Health Science Center, Houston, Texas 77030.

79. Texas Southern University.
The Leadership Development Program coordinates training for Head Start staffs, including the areas of child abuse and neglect. It sponsored a regionwide workshop in January with DeFrancis. Contact: Allee Mitchell, Director, Leadership Development Program, Texas Southern University, Houston, Texas 77004.

80. Texas State Bar Association.
The Texas State Bar Association is sponsoring 13 regional training sessions in cooperation with the Texas Department of Public Welfare. Relating to legal aspects of child abuse and neglect, the sessions will begin in the Fall of 1976. Contact: Mr. Dan Price, Texas State Bar Association, P.O. Box 12487, Austin, Texas 78711.

81. Trinity University.
A child abuse conference is sponsored annually.

82. University of Houston.
The Office of Continuing Education provides programs in child abuse for professionals and lay people.

83. University of Texas Health Science Center at San Antonio.
The Center provides speakers for the Texas DPW and conducts professional seminars for staff on child abuse. Contact: Harold S. Toy, MD, Assistant Professor, Department of Pediatrics, University of Texas Health Science Center at San Antonio, 7703 Floyd Curl Drive, San Antonio, Texas 78284.

84. University of Texas Medical Branch at Galveston.
In addition to serving as the Medical Component to the Region VI Resource Center on Child Abuse and Neglect, UTMB has a grant from the Anderson Foundation to provide direct services to abused and neglected children and their families. Staffings for all agencies serving involved families are held weekly. In addition, the project provides training and teaching to medical students and personnel as well as to other groups. An expert in dealing with sexual abuse will join the staff in 1976. Contact: Dr. Joan Hebeler, Department of Pediatrics, Galveston, Texas 77550.

85. W.A.I.F. (Women Aiding Infants and Families, Inc.)
This volunteer women's group facilitates the establishment of innovative therapeutic service to existing agencies involved in the area of child abuse in San Antonio. Their purpose is to bring the nature and severity of the problem to the attention of the community and to try to mobilize a coordinated community effort to combat it. They volunteer for SACAC (see separate listing) and aid in fund raising for child abuse projects. Contact: Karen Menger, Director, 200 Paseo Encinal, San Antonio, Texas 78212.

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National Directory of Child Abuse Services and Information. Chicago: National Committee for Prevention of Child Abuse, 1975.

Reference Handbook and Directory: *Child Abuse and Neglect, Region VI.* Austin, Texas: Region VI Resource Center on Child Abuse and Neglect, Center for Social Work Research, University of Texas at Austin, School of Social Work, 1976.

APPENDIX

SURVEY RELATING TO CHILD ABUSE AND NEGLECT SERVICES AND PROGRAMS IN REGION VI STATES

Please list services and programs you are providing relating to child abuse and neglect. Be as descriptive as possible, noting agency director or contact person and address. Use second sheet if necessary.

A. Child Abuse and Neglect Services Being Planned or Presently Delivered on Children Parents:

B. Contact person and address:

C. Screening Instruments for Identification of Child Abuse and Neglect in Use or Being Developed (Name of Instrument, author or publisher, brief description):

D. Education/Training Programs Planned or In Existence (Note if for public, abusing parents, staff, children, other):

E. Please list and describe any other child abuse and neglect programs or research projects, funded or unfunded, in your state that should be included in this directory (Give contact name and address):

Please return to: Daffney Henry, Region VI Resource Center on Child Abuse and Neglect, Center for Social Work Research, School of Social Work, The University of Texas at Austin, Austin, Texas 78712

STATE CHILD NEGLECT LAWS IN AMERICA*

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* Reprinted from Katz, Howe and McGrath, CHILD NEGLECT LAWS IN AMERICA 363-66 (American Bar Asso. 1976) with the permission of Sanford N. Katz.

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STATE CHILD NEGLECT LAWS IN AMERICA*

Appendix A

1. Neglect Statutes

Ala. Code tit. 13, §§ 350—371 (1958).
Alas. Stat. §§ 47.10.010—47.10.142 (1971).
Ariz. Rev. Stat. Ann. § 8-201 et seq. (1974). Civil.
Ariz. Rev. Stat. Ann. §§ 13-801; 13-827 (Supp. 1973) - Criminal.
Ark. Stat. Ann.§ 45-101 et seq.(1964 Repl.), as amended, (Cum. Supp. 1973).
Cal. Welf. & Inst'ns Code §§ 502—827 (West 1972), as amended, (West Supp. 1973).
Colo. Rev. Stat. Ann. § 22-1-1 et seq. (Perm. Cum. Supp. 1967), as amended, (Perm. Cum. Supp. 1969), as amended, (Perm. Cum. Supp. 1971), as amended by 1973 Session Laws, ch. 110.
Conn. Gen. Stat. Rev. § 17-32 et seq. (Supp. 1973).
Del. Code Ann. tit. 10, § 901 et seq. (Rev. 1974).
D. C. Code Ann. § 16-2301 et seq. (1973).
Fla. Stat. Ann. § 39.001 et seq. (1974).
Ga. Code Ann. § 24A-101 et seq. (1971), as amended, (Cum. Supp. 1973).
Hawaii Rev. Stat. § 571-1 et seq. (1968), as amended, (Supp. 1972).
Idaho Code § 16-1624 et seq. (Cum. Supp. 1973).
Ill. Rev. Stat. ch. 37, § 701-1 et seq. (Smith-Hurd 1972), as amended, (Smith-Hurd Supp. 1973).
Ind. Code § 31-5-7-1 et seq. (Cum. Supp. 1973).
Iowa Code § 232.1 et seq. (1969), as amended, (Supp. 1973).
Kan. Stat. Ann. § 38-801 et seq. (1973), as amended, (Cum. Supp.1974).
Ky. Rev. Stat. § 208.010 et seq. (Cum. Supp. 1973).
La. Rev. Stat. Ann. § 13:1560 et seq. (1968), as amended, (Cum. Supp. 1973) - Civil; 14:92.1 (Cum. Supp. 1973) - Criminal.
Me. Rev. Stat. Ann. tit. 22, § 3701 et seq. (Supp. 1973).
Md. Ann. Code § 3-801 et seq. (1974).
Mass. Gen. Laws Ann. ch. 119, §§ 1-39 (Cum. Supp. 1974).
Mich. Comp. Laws § 27.3178 (598.1) et seq. (1948), as amended, (Cum. Supp. 1974).
Minn. Stat. § 260.011 et seq. (1971), as amended, (Supp. 1973).
Miss. Code Ann. § 7185-01 et seq. (1952), as amended, (Cum. Supp. 1973). § 7187-01 et seq. (Cum. Supp. 1972).
Mo. Rev. Stat. § 211.011 et seq. (1962), as amended, (Cum. Supp. 1973).
Mont. Rev. Codes Ann. § 10-1300 et seq. (Cum. Supp. 1974).
Neb. Rev. Stat. § 43-201 et seq. (1968), as amended (Cum. Supp. 1973).
Nev. Rev. Stat. § 62.010 et seq. (1967), as amended (Supp. 1973).
N.H. Rev. Stat. Ann. §§ 169:1—169:26 (1964 Repl.), as amended, (Supp. 1973).
N.J. Rev. Stat. §§ 9:6-1—9:6-12 (1960), as amended, (Supp. 1974); §§ 30:4C-10-30:4C-19 (1964).
N.M. Stat. Ann. §§ 13-14-1—13-14-45 (Supp. 1973).

N.Y. Family Ct. Act § 1011 et seq. (McKinney 1970), as amended, (McKinney 1970), as amended (McKinney Supp. 1973-74).
N.C. Gen. Stat. §§ 7A-277—289 (1969 Rep.), as amended, (Cum. Supp. 1974).
N.D. Cent. Code § 27-20-01 et seq. (1974).
Ohio Rev. Code Ann. §§ 2151.01-2151.99 (Baldwin 1974).
Okla. Stat. Ann. tit. 10, §§ 1101—1129 (Supp. 1973).
Ore. Rev. Stat. §§ 419.472—419.575 (1973 Rep. Pt.).
Pa. Stat. Ann. tit. 11, § 50-101 et seq. (Cum. Supp. 1973).
R.I. Gen. Laws Ann. § 14-1-2 et seq. (1970), as amended, (Supp. 1974).
S.C. Code Ann. § 15-1095.1 et seq. (Cum. Supp. 1973).
S.D. Comp. Laws Ann. §§ 26-8-1—26-8-64 (1967), as amended, (Supp. 1973).
Tenn. Code Ann. §§ 37-201—37-259 (Cum. Supp. 1974).
Tex. Fam. Code Ann. § 11.01 et seq. (1975).
Utah Code Ann. §§ 55-10-63—55-10-123 (1974).
Vt. Stat. Ann. tit. 33, §§ 631-656 (Supp. 1973).
Va. Code Ann. § 16.1-139 et seq. (Cum. Supp. 1973).
Wash. Rev. Code Ann. §§ 13.04.010—13.04.180 (1962), as amended, (Cum. Supp. 1974).
W. Va. Code Ann. §§ 49-1-1; 49-1-2; 49-5-1—49-7-28 (1966), as amended, (Cum. Supp. 1974).
Wis. Stat. Ann. § 48.0 et seq. (Supp. 1973).
Wyo. Stat. Ann. § 14-115.1 et seq. (Comp. 1965), as amended, (Cum. Sup. 1973).
Guam Code Civ. Pro. §§ 250—282 (1970) - Civil; §§ 270—273a (1970) - Criminal.
P.R. Laws Ann. tit. 34, §§ 2001—2015 (1971).
V.I. Code Ann. tit. 5, § 2501 et seq. (Rev. 1967), as amended, (Cum. Supp. 1974).

2. Reporting Statutes That Include Neglect

Ala. Code tit. 27, §§ 21-25 (Cum. Supp. 1971).
Alas. Stat. §§ 47.17.010-47.17.070 (1971).
Ariz. Rev. Stat. Ann. § 8-546 et seq. (1974) - Civil; § 13-842.01 (Supp. 1973) - Criminal.
Ark. Stat. Ann. § 42-801 et seq. (Cum. Supp. 1973).
Colo. Rev. Stat. Ann. §§ 22-10-1—22-10-8 (Perm. Cum. Supp. 1969), as amended, (Perm. Cum. Supp. 1971).
Conn. Gen. Stat. Rev. § 17-38a (Supp. 1973).
Del. Code Ann. tit. 11, § 1001 et seq. (Rev. 1974).
D.C. Code Ann. § 2-161—2-166 (1973).
Fla. Stat. Ann. § 828.041 (Supp. 1973).
Hawaii Rev. Stat. §§ 350-1—350-5 (1968), as amended, (Supp. 1972).
Idaho Code §§ 16-1624; 16-1641 (Cum. Supp. 1973).
Ill. Rev. Stat. ch. 23, §§ 2041—2047 (Smith-Hurd 1968), as amended, (Smith-Hurd Supp. 1973).
Iowa Code §§ 235A.1-235A.8 (Supp. 1974).
Kan. Stat. Ann. §§ 38-716—38-722 (1973), as amended, (Cum. Supp. 1974).

Ky. Rev. Stat. § 199.335 (Cum. Supp. 1973).
La. Rev. Stat. Ann. § 14:403 (1951), as amended, (Cum. Supp. 1973).
Mass. Gen. Laws Ann. ch. 119, §§ 51A-51A (Cum. Supp. 1974).
Minn. Stat. § 626.554 (1971).
Miss. Code Ann. §§ 7187-05; 718-13 (Cum. Supp. 1972).
Mo. Rev. Stat. §§ 210.105—210.108 (Cum. Supp. 1973).
Mont. Rev. Codes Ann. §§ 10-1303—10-1307 (1968 Repl.), as amended, (Cum. Supp. 1974).
Neb. Rev. Stat. §§ 28-1501—28-1508(Cum. Supp. 1973).
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N.H. Rev. Stat. Ann. §§ 169:37—169:45 (Supp. 1973).
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N.D. Cent. Code §§ 50-25-01—50-25-05 (Cum. Supp. 1973).
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Pa. Stat. Ann. tit. 11, §§ 2101—2110 (Cum. Supp. 1973).
S.C. Code Ann. §§ 20-310—20-310.5 (Cum. Supp. 1973).
S.D. Comp. Laws Ann. §§ 26-10-10—26-10-15 (1967), as amended, (Supp. 1973).
Tenn. Code Ann. §§ 37-1201—37-1211 (Cum. Supp. 1974).
Tex. Fam. Code Ann. §§ 34.01—34.06 (1975).
Utah Code Ann. §§ 55-16-1—55-16-6 (1974).
Va. Code Ann. §§ 16.1-217.1—16.1-217.4 (Cum. Supp. 1973).
Wash. Rev. Code Ann. §§ 26.44.010—26.44.080 (Cum. Supp. 1974).
W. Va. Code Ann. §§ 49-6A-1—49-6A-4 (1966), as amended, (Cum. Supp. 1974).
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Alas. Stat. § 47.10.080(c)(3) (1973).
Ariz. Rev. Stat. Ann. §§ 8-531—8-544 (1974).
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Colo. Rev. Stat. Ann. § 22-4-1 et seq. (Perm. Cum. Supp. 1967).
Conn. Gen. Stat. Rev. §§ 17-32a; 17-43a (Supp. 1973), as amended by P.A. 74-164 (Feb. Session 1974).
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Kan. Stat. Ann. §§ 38-824(c) (1973).
Ky. Rev. Stat. § 199.600 et seq. (Cum. Supp. 1973).
La. Rev. Stat. Ann. § 13:1569(21) (Cum. Supp. 1973).
Me. Rev. Stat. Ann. tit. 22, § 3793 (Supp. 1973).
Mich. Comp. Laws §§ 27.3178 (598.19a—598.22) (Cum. Supp. 1974).
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Nev. Rev. Stat. §§ 128.010—128.120 (1967), as amended, (Supp. 1973).
N.H. Rev. Stat. Ann. §§ 170C:1—170C:15 (Supp. 1973).
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N.C. Gen. Stat. § 7A-288 (1969 Repl.).
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S.C. Code Ann. § 15-1095.36 (Cum. Supp. 1973).
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GLOSSARY OF LEGAL TERMS IN CHILD ABUSE CASES

JUDGE PAT McCLUNG, Dallas
Juvenile Court #2

September 1976 K

PREFACE TO GLOSSARY

The definitions set out are not submitted as conclusive or to exclude other possible definitions but to provide a basic foundation of understanding as to how these terms will likely be used during the course of handling parent-child matters in judicial proceedings. In some respects there may be slight variations in the accepted medical, social and legal definitions. These definitions attempt to span all areas for common understanding and stay within the confines of Texas law.

Reference to the following may be helpful:

Federal Child Abuse Prevention and Treatment Act, PL93-247 (Jan. 31, 1974)
Child Welfare Act, TEX. REV. CIV. STAT. ANN. art. 695a (Supp. 1976)
Child Care Licensing Act, TEX. REV. CIV. STAT. ANN. art. 695a-3 (Supp. 1976).
TEXAS FAMILY CODE
  -Title 2 - Parent and Child, TEX. FAMILY CODE ANN. sec. 11.01 (Supp. 1976) ("Definitions").
  -Title 3 - Delinquent Children and Children in Need of Supervision, TEX. FAMILY CODE ANN. sec. 51.02 (Supp. 1976) ("Definitions")
URBAN & RURAL SYSTEMS ASSOCIATES, GLOSSARY OF LEGAL TERMS IN CHILD ABUSE CASES (San Francisco) (California definitions given).
TEXAS JURISPRUDENCE 2d (TEX. JUR. 2d).
BLACK'S LAW DICTIONARY (5th ed. 1968).
BOUVIER'S LAW DICTIONARY (3rd ed. 1914).
WORDS & PHRASES (West 1973).
DICTIONARY OF BASIC LAW TERMS (Kylix Press, Merchantville, N.J., 1974)
Judicial decisions of Texas courts (Southwestern Reporter (S.W.; S.W. 2d)).
Child Abuse and Neglect Report and Inquiry System (CANRIS) (Form 2202-a).
State Department of Public Welfare Child Abuse Fact Sheet.
Regional Resource Center on Child Abuse/Neglect, Region VI (UT School of Social Work)

GLOSSARY OF LEGAL TERMS IN CHILD ABUSE CASES

ABANDONMENT -- by a parent of child is intentional relinquishment of a known right; it must be voluntary, absolute, and must amount to total desertion. 391 SW2d 549 (TCA 1965). See also - Family Code 15.02(1)(A), (B), (C), (F), (G); Father as to Mother 15.02(1)(H).

ABUSE OF A CHILD -- Physical or mental injury, sexual abuse, negligent treatment, or maltreatment of a child which indicate the child's health or welfare is harmed or threatened thereby. (Federal Child Abuse Prevention and Treatment Act) (PL93-247, (Jan. 31, 1974)).

Physical Abuse -- Intentional or wanton injury.

Sexual Abuse -- Any act involving molestation or exploitation, not limited to but including incest, rape, unnatural or perverted sexual practices on a child by a parent or custodian.

Emotional Abuse -- Denial of parental love and adequate affection.

ADOPTION -- A legal proceeding in which an adult takes a child, not the adoptive parents natural offspring, as a lawful child.

ADULT -- Any person not defined as "child" or "minor." (11.01)

AFFIDAVIT -- A written statement signed by the party making it, sworn to before some officer authorized to administer oaths, and certified to by such officer. An oath reduced to writing. TEX. REV. CIV. STAT. ANN. art. 23 (1975).

ALLEGATION -- A statement of fact usually made in a petition which must be proven to be found true, i.e. abuse, neglect, etc.

ATTORNEY AD LITEM -- Appointed by the Court to represent and defend a suit on behalf of a defendant (respondent) where service is by publication and no timely appearance or answer has been made. (TEX. R. CIV. P. 244)

AUTHORIZED AGENCY -- A public social agency authorized to care for children or place children for adoption, or a private association, corporation, or person approved for that purpose by State Department of Public Welfare. 11.01(7)

BEST INTEREST OF CHILD -- The standard for the Judge to use in disposing of suit affecting parent-child relationship. 15.02(2)

CHILD -- Any person under 18 who
(1) is not and has not been married or
(2) has not had disabilities of minority removed for general purposes. (11.01)

CITATION -- An act of the Court commanding the appearance of a person at a time and place named to answer the plaintiff's petition.

CONFIDENTIALITY -- Told in confidence, intended to be kept secret. (Not to be confused with Privileged Communication) See 34.08 re Child Abuse Reports.

CONTEMPT -- The offense committed by one whose conduct is such as to interfere with or prejudice parties litigant or their witnesses during litigation, or to impede, embarrass, or obstruct the Court in the discharge of its duties and such conduct that tends to bring the authority and administration of law into disrespect or disregard. (14.09)

CONTUMACIOUSLY (Contumacy) -- Stubbornly and rebelliously resistant to authority. Willful contempt of Court. (15.021)

COURT -- The District Court, Court of Domestic Relations, Juvenile Court of District Court Jurisdiction. (11.01) (Note distinction 51.02, 51.04 for purposes of Title III)

DUE PROCESS -- The rights of persons involved in court proceedings to be treated with fundamental fairness and to be accorded Constitutional guarantees.

GUARDIAN AD LITEM -- Appointed by the Court to look after the interests of his ward (the child) during the time the case is pending and duties terminate when the case is closed by the Court. (11.10)

HABEAS CORPUS -- An order issued by a Court of competent jurisdiction commanding anyone having a person in custody or restraint to produce that person at a time and place and show why such person is in custody or restraint.

ILLEGITIMATE CHILD -- A child who is not and never has been the legitimate child of a man and whose parent-child relationship with its natural mother has not been terminated. 11.01(8)

INTERLOCUTORY JUDGMENT OR ORDER -- One made during the pendency of an action that does not finally dispose of the case but leaves it in such a state that further action by the Court is necessary in order to finally settle and determine the controversy. It may partially dispose of parties or issues.

JUDGMENT -- The declaration of a judicial act of a Court in finally adjudicating the matter in controversy.

JURISDICTION -- The power to hear and determine controversies, conferred on legally organized courts by the Constitution and the Statutes. See 11.05 Continuing Jurisdiction

MANAGING CONSERVATOR -- Usually the person having custody of a child under a court order. Rights and duties set out in 14.02 (Family Code).

NEGLECTED CHILD -- (a) A Child not having proper Parental Care (465 SW2d 393 (TCA 1971).
(b) A child whose parents neglect or refuse to provide necessary medical, surgical, special care or subsistence education as required for health, morals or well being.
(c) Religious belief no excuse for failure to provide medical attention (Texas 1972)
(d) Failure of parent to take action to control mental disorder of parent (465 SW2d 393 (TCA 1971).

(e) Unlawfully kept from school or cause the child to "run-away." 11.01(J)

NOTICE -- Information concerning a fact actually communicated to a person by an authorized person. (See 11.09) "Notice of a hearing shall be issued and served as in other civil cases." 11.09(C)(ii)

PARENT -- The mother of a child or a father as to whom the child is legitimate. Does not include father as to whom the child is illegitimate or person whose parental rights have been terminated by Court order.

PARENTAL CARE -- A descriptive term referring to that kind and quality of care which should be, and ordinarily is, provided by a parent. Hendricks v Curry, 401 SW2d 796 (Tex. 1966).

PARENT-CHILD RELATIONSHIP -- The rights, privileges, duties, and powers existing between a parent and child described by Family Code 12.04.

PETITIONER (Plaintiff) -- The party bringing an action or prosecuting a proceeding.

POSSESSORY CONSERVATOR -- Usually the person having visitation rights with a child under a Court order. Rights and duties in Sec. 14.04 (Family Code).

PRIVILEGED COMMUNICATION -- A confidential communication that need not and often cannot be disclosed in Court without consent of holder of privilege. (Ex-lawyer - client communication)

SUIT AFFECTING PARENT-CHILD RELATIONSHIP -- Brought under Family Code to seek

(1) Appointment of managing or possessory conservator,
(2) Access to child,
(3) Support of a child,
(4) Establish or terminate parent-child relationship 11.01(6)

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CHILD ABUSE & PROTECTIVE SERVICES

SUE M. HALL, Assistant Professor
St. Mary's University
College of Law

September 1976 L

FOREWARD

This Bibliography makes no pretense of being an exhaustive listing of the publications on child abuse and neglect. It was designed to have a legal slant to it, though it would not be entirely accurate to call it a legal bibliography. It is designed to give attorneys a good working relationship of child abuse and neglect and some of the associated issues, but can be used as easily by other disciplines as well.

The Bibliography begins with general works on child abuse and neglect, then moves into various professions and groups who are frequently involved in the actual day to day situations which produce the child abuse and neglect statistics. The bulk of the Bibliography, however, is found under the headings Legal and Child Abuse Legislation. It was felt necessary not to limit the Bibliography to "legal articles," as the seminar has a much broader approach and so should attorneys practicing child welfare law.

The style of the Bibliography is "amended law review." The amending comes from the author's lack of knowledge, lack of time or conscious disregard. For those who do not immediately see the format, the first publications in any category are books and pamphlets or what we choose to classify as one or the other. Next come articles which are not written by law students (except for some inadvertent errors), then those under titles "Comment," "Note" or "Recent Decision" which are written by law students, who don't get credit for what they write. Finally are references to legal encyclopedias.

Next, a word about the index. The original intent was to include page numbers after the section numbers in the index. Time did not permit this. Therefore, the reader may find it awkward to use. If you have trouble finding IIID4, or whatever, try looking at the Table of Contents to locate the beginning page number of that section.

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CHILD ABUSE AND NEGLECT FORMS: INVESTIGATION, EMERGENCY PROTECTION AND EXTENDED RELIEF (CONSERVATORSHIP AND TERMINATION)

WILLIAM M. SCHUR, Fort Worth
Wynn, Brown, McConnico, Mack,
Renfro & Thompson

September 1976

I wish to acknowledge the assistance of Mr. Sproesser Wynn and my secretary Mrs. Barbara Hodde, without whose assistance and expertise these forms could not have been prepared.

M

CHILD ABUSE AND NEGLECT FORMS: INVESTIGATION, EMERGENCY PROTECTION AND EXTENDED RELIEF (CONSERVATORSHIP AND TERMINATION)

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CHILD ABUSE AND NEGLECT FORMS: INVESTIGATION, EMERGENCY PROTECTION AND EXTENDED RELIEF (CONSERVATORSHIP AND TERMINATION)

PRACTICE NOTES

CHILD ABUSE INVESTIGATION ORDERS

NATURE OF PROCEEDINGS

Reports of child abuse are routinely investigated without judicial intervention. Section 34.05(c) proceedings are necessary only when there is resistance to a proper child abuse investigation.

Section 34.05 proceedings are commenced by the filing of an application seeking what is in effect a mandatory injunction. Accordingly, the application should be verified or supported by appropriate affidavits.

Proceedings under Section 34.05 are not suits affecting the parent-child relationship (SAPCRs) as defined by Sec. 11.01(5) of the Texas Family Code because they are brought under Subtitle C and not Subtitle A. Accordingly, SAPCR pleading requirements are inapplicable.

APPLICANT

Only the State Department of Public Welfare (through the appropriate county child welfare unit) or county agency responsible for the protection of juveniles may file the application.

JURISDICTION

If a juvenile court has been designated, the application will normally be filed in that court. Applications may also be filed in any district court. The existence of a court with continuing jurisdiction is irrelevant and in many cases will be unknown when the application is filed. Section 34.05 proceedings not being SAPCRs, the continuing jurisdiction rules are inapplicable.

SPECIFICITY OF APPLICATION

Child abuse investigations are highly sensitive matters and disclosure of information concerning these investigations is discouraged. See Sec. 34.08, Texas Family Code, added by Acts 1975, 64th Leg., p. 1272, ch. 476, § 54, eff. Sept. 1, 1975. Accordingly, unverified reports of child abuse should not be published by inclusion in Section 34.05 applications unless there is a need to do so. The critical concern is not the nature of the alleged child abuse but the resistance of parents or other responsible persons to investigative efforts. For this reason, the forms in this section recite merely the fact that a report was received on a specific date without divulging the source or contents of the report or any indication by the Applicant of a belief in the accuracy of the report.

Specific facts detailing Applicant's unsuccessful efforts to complete the investigation are also deleted.

Local practice will vary with respect to the detail required to be alleged and proved before a Court will issue a Section 34.05 order. If additional detail is required, supporting affidavits can be filed with the application or additional specific allegations added to the application.

HEARING

The statute does not describe the hearing contemplated in response to the application. In view of the function of the proceedings, it would seem that ex parte orders are contemplated.

ENFORCEMENT

Presumably, violation of a valid Section 34.05 order can be enforced by contempt. Furthermore, taken in conjunction with the best interest of the child, violation of a Section 34.05 order is an adequate ground for terminating parental rights. See Section 15.02(1)(I), Texas Family Code, as Amended by Acts 1975, 64th Leg., p. 1266, ch. 476, § 31, eff. Sept. 1, 1975.

MEDICAL EXAMINATION

Physicians and dentists are not liable for damages except those resulting from negligence when examining allegedly abused or neglected children. See Sec. 35.04, Texas Family Code, Amended by Acts 1975, 64th Leg., p. 1273, ch. 476, § 55, eff. Sept. 1, 1975.

No. ________

IN THE INTEREST OF)
)
____________________,)
)
(A) CHILD(REN))

DESIGNATION OF COURT

APPLICATION FOR ORDER REQUIRING COOPERATION WITH CHILD ABUSE INVESTIGATION

This Application is filed pursuant to Section 34.05(c), Texas Family Code, by ____(NAME OF AGENCY)____, hereinafter called "Applicant," acting by and through ____(NAME OF AGENT)____, its ____(STATE TITLE OR POSITION)____.

1.

On the _____ day of ______________, 19___, Applicant received a report of child abuse or neglect concerning the child(ren) identified as follows:

NAME ________________________________

SEX ______________ AGE ______________

BIRTHPLACE __________ BIRTHDATE __________

RESIDENCE ________________________________

REPEAT FOR EACH CHILD

2.

Applicant believes that the parents or persons responsible for the care of the child(ren) are:

NAME ________________________________

RESIDENCE ________________________________

RELATIONSHIP TO CHILD(REN) ______________

REPEAT FOR EACH RESPONSIBLE PERSON

3.

Applicant has attempted to conduct a complete investigation of this report in the manner specified in Section 34.05, Texas Family Code, but Applicant cannot obtain admission to the residence of the child(ren) situated at (STREET ADDRESS), (CITY), (COUNTY), Texas, and has been unable to interview the child(ren) at any other location. Furthermore, Applicant has been unable to secure permission from the parents or persons responsible for the care of the child(ren) for the necessary physical and psychological or psychiatric examinations of the child(ren).

PRAYER

Applicant prays that an Order be issued requiring the parents or persons responsible for the care of the child(ren) described above to cooperate with Applicant in Applicant's investigation of the child abuse report described above.

Applicant further prays that an Order be issued requiring any person having access to the premises situated at (STREET ADDRESS), (CITY), (COUNTY), Texas, or having access to any other place where the child(ren) may be situated to allow Applicant entry to such premises for the purpose of interviewing the child(ren) and conducting the investigation of the child abuse report described above.

Applicant further prays that an Order be issued requiring the parents or persons responsible for the care of the child(ren) to submit the child(ren) for and consent to such physical and psychological or psychiatric examinations as Applicant may deem necessary for the purpose of conducting the investigation of the child abuse report described above.

Applicant prays for general relief.

____
Applicant (Attorney for Applicant)

____
Address

THE STATE OF TEXAS)
)
COUNTY OF_____________)

Before me, the undersigned authority, on this day personally appeared (NAME OF AFFIANT), Affiant, who having been by me first duly sworn, upon oath stated: "My name is________ _________, and I am authorized to execute this Affidavit in my capacity as (STATE TITLE OR POSITION) of (NAME OF APPLICANT AGENCY). I have read the above and foregoing Application for Order Requiring Cooperation with Child Abuse Investigation, and all allegations stated therein are true and correct."

(NAME OF AFFIANT), Affiant

Sworn to and subscribed before me by Affiant this_______day of__________________, 19_____, to certify which witness my hand and seal of office.

____
Notary Public in and for
______________County, Texas

My Commission Expires:___________

No. ________

IN THE INTEREST OF)
)
____________________,) DESIGNATION OF COURT
)
(A) CHILD(REN))

ORDER REQUIRING COOPERATION WITH CHILD ABUSE INVESTIGATION

On this day the Application of (NAME OF APPLICANT AGENCY) for Order Requiring Cooperation with Child Abuse Investigation was presented to me in chambers without notice of hearing.

Applicant (NAME OF APPLICANT AGENCY) appeared by and through (NAME OF AGENT), its (TITLE OR POSITION), and by attorney.

The Court, having examined the pleadings and heard the evidence, finds that it has jurisdiction to enter this Order pursuant to Section 34.05, Texas Family Code.

The Court further finds that a report of child abuse with respect to the child(ren) (NAMES) has been received by Applicant and that Applicant is now conducting the investigation of such report required by law.

The Court further finds that Applicant cannot complete its investigation in the manner required by law unless the following orders are issued.

It is, therefore, ORDERED that (NAMES OF PARENTS OR RESPONSIBLE PERSONS), the (party/parties) responsible for the care of the child(ren) (NAMES) cooperate with (NAME OF APPLICANT

AGENCY)____in its investigation of a child abuse report concerning the child(ren).

It is further ordered that (NAMES OF RESPONSIBLE PARTIES) and any other person or persons having access to the premises situated at (STREET ADDRESS) , (CITY) , (COUNTY) , Texas, or having access to any other premises where the child(ren) (NAMES) may be situated allow (NAMES OF SPECIFIC CASEWORKERS) of (NAME OF APPLICANT AGENCY) to enter such premises for the purpose of interviewing the child(ren) and conducting the investigation of the child abuse report in the manner provided by law.

It is further ordered that (NAME OF RESPONSIBLE PARTIES) submit the child(ren) (NAMES) for and consent to such physical, psychological or psychiatric examinations as (NAME OF APPLICANT AGENCY) may deem necessary for the purpose of conducting the investigation of the child abuse report in the manner provided by law.

Signed the____day of__________, 19___, at________o'clock ___.M.

____
JUDGE PRESIDING

PRACTICE NOTES

EMERGENCY PROTECTION

NATURE OF PROCEEDING

Generally speaking, Chapter 17 Emergency Protection suits are not suits asking the Court to authorize the taking of children into protective custody. In a genuine emergency, DPW workers, law enforcement officers, and juvenile probation officers have authority to take possession of children immediately without fear of civil liability. Sections 17.01 and 17.09, Texas Family Code. It is after taking possession of the child that the child is to be delivered to the Court and a hearing held to provide for temporary care and protection.

Nevertheless, in some areas law enforcement officers may be unwilling to act without evidence of prior judicial authorization, in writing. Accordingly, special forms are included to cover this problem.

Chapter 17 proceedings are commenced by the filing of a petition. In view of the relief requested, the petition should be verified or supported by appropriate affidavits.

Chapter 17 proceedings are technically suits affecting the parent-child relationship (SAPCRs) as defined by Sec. 11.01(5) of the Texas Family Code. Accordingly, SAPCR pleading requirements should be satisfied to the extent possible.

PETITIONER

The duty to file a Chapter 17 suit rests upon the DPW agent or law enforcement or juvenile probation officer who has taken (or plans to take) possession of the child. Technically, it is the agent or officer (and not the agency) who files the petition. Accordingly, it will frequently be the case that the Petitioner will not be appointed as the temporary managing conservator since it may be preferable for the agency to receive the appointment.

JURISDICTION

Although Chapter 17 suits are SAPCRs, any court having jurisdiction of SAPCRs generally can take jurisdiction of an emergency protection suit even if another court may have continuing jurisdiction over the children involved. Sec. 17.01, Texas Family Code.

A court does not acquire continuing jurisdiction over a child by virtue of taking jurisdiction of a Chapter 17 suit. Sec. 17.08.

If further relief concerning the child is sought, a separate suit under another chapter of Subtitle A of Title II of the Code should be filed in the court which does have continuing jurisdiction of the child.

SPECIFICITY OF PETITION

In view of the relief requested and the fact that ex parte orders may be issued, the Court should be presented with the factual basis for the conclusion of dependency or immediate danger. These forms contemplate inclusion of the details in Affidavits to be attached to and incorporated in the petition.

HEARING

The hearing under Sec. 17.02 may be held without notice. Sec. 17.03. If modification of the Sec. 17.02 order is desired, a modification hearing may be held upon notice to "those persons involved in the original emergency hearing." Sec. 17.06.

DURATION OF ORDERS

Orders in Chapter 17 proceedings have a ten-day maximum duration. Within ten days, the children involved should be released into their parents', guardians' or conservators' possession or made the subject of a full-scale SAPCR (conservatorship or termination suit), presumably in the Court having continuing jurisdiction of the children. Children are not to be tied up indefinitely in Chapter 17 proceedings. Note carefully Sec. 17.05, Texas Family Code, as amended by Acts 1975, 64th Leg., p. 1270, ch. 476, § 45, eff. Sept. 1, 1975. Appeals from emergency orders do not stay the order. Sec. 17.07.

SUPPLEMENTAL INJUNCTIVE RELIEF

These forms include provisions for restraining interference with the temporary managing conservator's possession of the children.

EXPLANATION OF FORMS

There are two petitions: one for those cases in which the child has and one for cases in which the child has not been picked up.

These are identifiable by the title appearing below the caption.

There are two orders: one for the issuance of a writ of attachment and one for use in all cases after delivery of the child to the Court. A sample writ of attachment is also included.

ALTERNATIVE AND ADDITIONAL FORMS

For alternative and additional forms, see Hester, "Emergency Protection of Children: Chapter 17 of the Family Code", in this booklet.

Note especially Judge Hester's forms setting hearings in emergency protection suits. Judge Hester in these forms directs the Clerk to ask the State Department of Public Welfare for identification of the court which last had jurisdiction of the child. He also provides for a hearing with notice in appropriate cases. There are no counterparts of these forms in this section.

Note also that Judge Hester's Order for Care and Protection directs return of the child unless ex parte orders are issued by a court having continuing jurisdiction of the child. This provision is designed to prevent a child from being detained beyond the ten-day maximum duration period of the order. Sec. 17.05(b).

No. ________

IN THE INTEREST OF)
)
____________________,) **DESIGNATION OF COURT**
)
(A) CHILD(REN))

ORIGINAL PETITION IN SUIT
FOR PROTECTION OF CHILD(REN) IN EMERGENCY:
CHILD(REN) IN PETITIONER'S POSSESSION

This suit is brought by ____(NAME)________, Petitioner, in (his/her) capacity as ____(STATE CAPACITY AND AGENCY)____. Petitioner is _______ years of age, resides at (ADDRESS, CITY, STATE) , and is unrelated to the child(ren) named below.

1.

This Court has jurisdiction of this suit under the provisions of Section 17.01, Texas Family Code.

2.

The following (child is/children are) the subject(s) of this suit:

NAME __________________ SEX __________________
BIRTHPLACE ____________ BIRTH DATE ___________
PRESENT RESIDENCE ____________________________

REPEAT FOR EACH CHILD

3.

The mother of the above-named subject child(ren) is ________________________________, whose age is ________, and whose residence is________________________________.

4.

The father of the above-named subject child(ren) is __________________________________, whose age is_________, and whose residence is_________________________________.

5.

The following persons are, to the best of Petitioner's information and belief, the only persons having court-ordered relationships with the above-named subject child(ren):

NAME (IF NONE KNOWN, STATE "UNKNOWN")

PRESENT RESIDENCE (IF UNKNOWN, STATE "UNKNOWN")

RELATIONSHIP (E.G., MANAGING CONSERVATOR, POSSESSORY CONSERVATOR, GUARDIAN OF PERSON, GUARDIAN OF ESTATE, GUARDIAN OF PERSON AND ESTATE)

REPEAT FOR EACH APPLICABLE INDIVIDUAL

6.

Petitioner at this time lacks information concerning the nature and value of property owned or possessed by the above-named subject child(ren).

7.

Petitioner took possession of the above-named subject child(ren) pursuant to Section 17.01, Texas Family Code, at _________o'clock_____.M. on (DATE) in (COUNTY), Texas.

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Petitioner would show that the (child is/children are) without support and dependent on society for protection. In the alternative, Petitioner would show that the (child is/children are) in immediate danger of physical or emotional injury. Petitioner would further show that Court orders for the care and protection of the child(ren), as authorized by Section 17.04, Texas Family Code, are necessary for the reasons set forth in the Affidavit(s) attached hereto and incorporated herein for all intents and purposes as (Exhibit "A"/Exhibits "A" - "___").

8.

Appointment pursuant to Section 17.04, Texas Family Code, of (NAME OF TEMPORARY MANAGING CONSERVATOR) (, who is the [STATE RELATIONSHIP TO CHILD OR TITLE AND AGENCY OF NAMED INDIVIDUAL].) as temporary managing conservator of the above-named subject child(ren) is in the best interest of the child(ren).

9.

Based upon the conduct of (NAMES OF PARENTS OR OTHER PERSONS TO BE ENJOINED), as described in the Affidavit(s) attached hereto and incorporated herein for all intents and purposes as (Exhibit "A"/Exhibits "A" - "___",) Petitioner believes that (NAMES OF PARENTS OR OTHER PERSONS) will attempt to molest or disturb the child(ren) and persons in whose care the child(ren) may be placed. Petitioner further believes that (NAMES OF PARENTS OR OTHER PERSONS) may attempt to remove the child(ren) from the care of the temporary managing conservator or from the jurisdiction of this Court. Disturbance or removal of the child(ren) would cause the child(ren) immediate and irreparable physical or emotional injury for which there is no adequate remedy at law.

PRAYER

Petitioner prays that the Court issue, immediately and without notice, such orders for the care and protection of the child(ren) ___(NAMES)___ as the Court may deem appropriate under the circumstances.

Petitioner specifically prays that __(NAME OF TEMPORARY MANAGING CONSERVATOR)__ be appointed temporary managing conservator of the child(ren) ___(NAMES)___ and that ___(NAMES OF PARENTS OR OTHER PERSONS)___ be temporarily restrained, immediately and without notice, from: (1) molesting or disturbing the child(ren); (2) interfering in any way with the temporary managing conservator's possession of the child(ren) by taking or attempting to take possession of the child(ren), directly or through any other person, from any place where the child(ren) may be; and (3) removing the child(ren) from the jurisdiction of this Court.

Petitioner prays for general relief.

____
Petitioner (Attorney for Petitioner)

____
Address

THE STATE OF TEXAS)
)
COUNTY OF____________)

Before me, the undersigned authority, on this day personally appeared ____(NAME OF PETITIONER)____, Affiant, who, having been by me first duly sworn, upon oath stated: "My name is ____(NAME OF PETITIONER)____. I have read the above and foregoing petition and all allegations stated therein are true and correct."

____
(NAME OF PETITIONER), Affiant

Sworn to and subscribed before me by Affiant this________ day of________________, 19____, to certify which witness my hand and seal of office.

____
Notary Public in and for
______________County, Texas

My Commission Expires:_____________

No. ________

IN THE INTEREST OF)
)
____________________,)
) **DESIGNATION OF COURT**
(A) CHILD(REN))

ORIGINAL PETITION IN SUIT FOR PROTECTION OF CHILD(REN) IN EMERGENCY: CHILD(REN) NOT IN PETITIONER'S POSSESSION

This suit is brought by ____(NAME)______, Petitioner, in (his/her) capacity as ____(STATE CAPACITY AND AGENCY)___. Petitioner is ______years of age, resides at (ADDRESS, CITY, STATE), and is unrelated to the child(ren) named below.

1.

This Court has jurisdiction of this suit under the provisions of Section 17.01, Texas Family Code.

2.

The following (child is/children are) the subject(s) of this suit:

NAME ________________ SEX ______________________

BIRTHPLACE __________ BIRTH DATE _____________

PRESENT RESIDENCE _______________________________

REPEAT FOR EACH CHILD

3.

The mother of the above-named subject child(ren) is _____________________________, whose age is _________, and whose residence is _________________________________.

4.

The father of the above-named subject child(ren) is _____ ____________________________, whose age is _______, and whose residence is ___________________________________.

5.

The following persons are, to the best of Petitioner's information and belief, the only persons having court-ordered relationships with the above-named subject child(ren):

NAME (IF NONE KNOWN, STATE "UNKNOWN")

PRESENT RESIDENCE (IF UNKNOWN, STATE "UNKNOWN")

RELATIONSHIP (E.G., MANAGING CONSERVATOR, POSSESSORY CONSERVATOR, GUARDIAN OF PERSON, GUARDIAN OF ESTATE, GUARDIAN OF PERSON AND ESTATE)

REPEAT FOR EACH APPLICABLE INDIVIDUAL

6.

Petitioner at this time lacks information concerning the nature and value of property owned or possessed by the above-named subject child(ren).

7.

Petitioner would show that the above-named subject (child is/children are) without support and dependent on society for protection. In the alternative, Petitioner would show that the (child is/children are) in immediate danger of physical or emotional injury. Petitioner would further show that Court orders for the care and protection of the child(ren), as authorized by Section 17.04, Texas Family Code, are necessary for the reasons set forth in the Affidavit(s) attached hereto and incorporated herein for all intents and purposes as (Exhibit "A"/Exhibits "A" - "___").

8.

Appointment pursuant to Section 17.04, Texas Family Code, of ____(NAME OF TEMPORARY MANAGING CONSERVATOR)_____(, who is the ____(STATE RELATIONSHIP TO CHILD OR TITLE AND AGENCY OF NAMED INDIVIDUAL)_____,) as temporary managing conservator of the above-named subject child(ren) is in the best interest of the child(ren).

9.

Based upon the conduct of____(NAMES OF PARENTS OR OTHER PERSONS TO BE ENJOINED)___, as described in the Affidavit(s) attached hereto and incorporated herein for all intents and purposes as (Exhibit "A"/Exhibits "A" - "___"), Petitioner believes that ___(NAMES OF PARENTS OR OTHER PERSONS)____will attempt to molest or disturb the child(ren) and persons in whose care the child(ren) may be placed. Petitioner further believes that_(NAMES OF PARENTS OR OTHER PERSONS)__may attempt to remove the child(ren) from the care of the temporary managing conservator or from the jurisdiction of this Court. Disturbance or removal of the child(ren) would cause the child(ren) immediate and irreparable physical or emotional injury for which there is no adequate remedy at law.

PRAYER

Petitioner prays that the Court issue, immediately and without notice, such orders for the care and protection of the child(ren) (NAMES) as the Court may deem appropriate under the circumstances.

Petitioner specifically prays for permission to take immediate possession of the child(ren) (NAMES); that (NAME OF TEMPORARY MANAGING CONSERVATOR) be appointed temporary managing conservator of the child(ren) (NAMES); and that (NAMES OF PARENTS OR OTHER PERSONS) be temporarily restrained, immediately and without notice, from: (1) molesting or disturbing the child(ren); (2) interfering in any way with the temporary managing conservator's possession of the child(ren) by taking or attempting to take possession of the child(ren), directly or through any other person, from any place where the child(ren) may be; and (3) removing the child(ren) from the jurisdiction of this Court.

Petitioner prays for general relief.

(Petitioner / Attorney for Petitioner)

Address

THE STATE OF TEXAS)
)
COUNTY OF __________)

Before me, the undersigned authority, on this day personally appeared (NAME OF PETITIONER), Affiant, who, having been by me first duly sworn, upon oath stated: "My name is____(NAME OF PETITIONER)_____. I have read the above and foregoing Petition and all allegations stated therein are true and correct."

____
(NAME OF PETITIONER), Affiant

Sworn to and subscribed before me by Affiant this__________ day of__________________, 19____, to certify which witness my hand and seal of office.

____
Notary Public in and for
______________County, Texas

My Commission Expires:__________

No. ________

IN THE INTEREST OF)
)
____________________,) DESIGNATION OF COURT
)
(A) CHILD(REN))

AFFIDAVIT IN SUPPORT OF PETITION IN SUIT FOR PROTECTION OF CHILD(REN) IN EMERGENCY

THE STATE OF TEXAS)
)
COUNTY OF____________)

Before me, the undersigned authority, on this day personally appeared_____(NAME)______, Affiant, who, having been by me first duly sworn, upon oath stated:

"My name is_____(NAME)_________. I am the__(STATE TITLE OR POSITION)____of_____(NAME OF AGENCY)_____. I am _______years of age and have worked with_____(NAME OF AGENCY)_____for________years.

WITHIN QUOTATION MARKS,
HERE STATE PROFESSIONAL
TRAINING AND EXPERIENCE

"On the_______day of_______________, 19____, I first became aware of the circumstances of the child(ren) _____(NAMES)_____.

CONTINUE WITH A NARRATIVE STATING HOW THE
PROBLEM CAME TO AFFIANT'S ATTENTION, WHAT
AFFIANT DID TO INVESTIGATE THE PROBLEM,
WHAT AFFIANT LEARNED FROM HIS OWN PERSONAL
OBSERVATIONS, AND WHAT AFFIANT WAS TOLD BY

OTHERS. HEARSAY SHOULD BE CLEARLY IDENTIFIED AS SUCH. FOR EXAMPLE, "MR. X, WHO IS A NEIGHBOR OF MR. AND MRS. ALLEGED ABUSER, TOLD ME THAT ON APRIL 1, 1976, ABOUT 3:00 P.M., HE SAW MR. ABUSER STRIKE THE INFANT REPEATEDLY WITH A BELT OR STRAP."

"Based on this information, I have concluded that the child(ren)____(NAMES)______are dependent upon society for protection and that the child(ren) will suffer continued physical or emotional injury unless protective orders for the care of the child(ren) are immediately issued by this Court. I have further concluded that irreparable physical and emotional injury will result to the child(ren) if____(NAMES OF PARENTS OR OTHER PERSONS TO BE RESTRAINED)_____are allowed to remove the child(ren) from the jurisdiction of this Court or otherwise interfere with the possession of the child(ren) by a temporary managing conservator duly appointed by this Court."

____
(NAME OF AFFIANT), Affiant

Sworn to and subscribed by Affiant before me this______day of__________________, 19____, to certify which witness my hand and seal of office.

____
Notary Public in and for
________________County, Texas

My Commission Expires:__________

No. ________

IN THE INTEREST OF)
)
____________________,) **DESIGNATION OF COURT**
)
(A) CHILD(REN))

EX PARTE ORDER FOR WRIT OF ATTACHMENT IN SUIT FOR PROTECTION OF CHILD(REN) IN EMERGENCY

On this day the Original Petition in this cause was presented to me in chambers without notice of hearing.

Petitioner appeared in person (and by attorney).

The Court, having examined the pleadings and heard the evidence, finds that it has jurisdiction of this cause under Chapter 17, Texas Family Code, and that the child(ren) ____(NAMES)________ (is/are) apparently without support, dependent on society for protection, and in immediate danger of physical or emotional injury.

IT IS THEREFORE ORDERED by the Court that the Clerk forthwith issue a Writ of Attachment commanding any sheriff or constable within the State of Texas to take the body (bodies) of the child(ren) _______(NAMES)__________ and deliver said child(ren) safely into the possession of _____(NAME OF PETITIONER)______ at ______(ADDRESS)______, and _____(NAME OF PETITIONER)______ is hereby ordered to produce said child(ren) before this Court immediately after taking possession of said child(ren).

Signed the _____ day of ___________________, 19___, at _______ o'clock ______.M.

____
JUDGE PRESIDING

WRIT OF ATTACHMENT

THE STATE OF TEXAS

TO any sheriff or any constable within the State of Texas

GREETINGS:

Whereas there is pending in the ____(DESIGNATE COURT)____ of ____________ County, Texas, cause number ____________, said cause being styled ____; and

Whereas on the _____ day of _________________, 19____, said Court issued its order in said cause ordering the issuance of this Writ of Attachment, a certified copy of which order is attached to this Writ:

You are commanded to take the body (bodies) of the child(ren) ____(NAMES)_____ and deliver said child(ren) safely into the possession of ____(NAME OF PETITIONER)____ at ________(ADDRESS)________, where delivery of said child(ren) may be made.

Herein fail not, but make due return of this Writ instanter.

Given under my hand and the seal of said Court on this ______ day of ________________, 19____.

____
Clerk of the __________________
Court of _________ County, Texas

By ____________________________
Deputy

RETURN

Came to hand on this_______day of________________, 19____, at_______o'clock_____.M., and executed on the_______day of ____________________, 19____, at_____o'clock_____.M., by taking the body (bodies) of the herein described person(s) and delivering said person(s) to____, as herein directed.

I actually and necessarily traveled________miles in the execution of this writ, and my fees are $__________.

The original returned this_____day of_____________, 19____.

____
(Sheriff/Constable) of
__________________County, Texas

By______________________________
Deputy

No. ________

IN THE INTEREST OF)
)
____________________,) DESIGNATION OF COURT
)
(A) CHILD(REN))

EX PARTE ORDERS IN SUIT FOR PROTECTION OF CHILD(REN) IN EMERGENCY

On this day the Original Petition in this cause was presented to me in chambers without notice of hearing.

Petitioner appeared in person (and by attorney) and delivered the child(ren) ______(NAMES)________ to the Court.

The Court, having examined the pleadings and heard the evidence, finds that it has jurisdiction of this cause under Chapter 17, Texas Family Code, and that the above-named (child is/children are) apparently without support, dependent on society for protection, and in immediate danger of physical or emotional injury.

The Court further finds that it is in the best interest of the child(ren) that ____(NAME OF TEMPORARY MANAGING CONSERVATOR)__ be appointed temporary managing conservator of the child(ren).

The Court finds that rendition of the following orders is in the best interest of the child(ren).

It is therefore ORDERED that __(NAME OF TEMPORARY MANAGING CONSERVATOR)___ be and is hereby appointed Temporary Managing Conservator of the child(ren) _____(NAMES)________ and as Temporary Managing Conservator shall have the following rights, privileges, duties and powers:

(1) the right to have physical possession of the child(ren);

(2) the duty of care, control, protection and reasonable discipline of the child(ren);

(3) the duty to provide the child(ren) with clothing, food, shelter, and education;

(4) the power to consent to medical, psychiatric, and surgical treatment of the child(ren); and

(5) the power to represent the child(ren) in legal action and make other decisions of substantial legal significance concerning the child(ren).

It is further ordered that (NAMES OF PARENTS OR OTHER PERSONS RESTRAINED) (is/are) temporarily restrained and prohibited from:

(1) molesting or disturbing the child(ren) or (NAME OF TEMPORARY MANAGING CONSERVATOR);

(2) interfering in any way with (NAME OF TEMPORARY MANAGING CONSERVATOR)'s possession of the child(ren) by taking or attempting to take possession of the child(ren), directly or through any other person, from any place where the child(ren) may be; and

(3) removing the child(ren) from the jurisdiction of this Court.

This order shall expire at the end of the ten-day period following the date of this order, on the restoration of the child(ren) by the temporary managing conservator appointed herein to the possession of a parent, guardian or conservator of the child(ren), or on the issuance of further temporary orders in a suit affecting the parent-child relationship with respect to the child(ren), whichever first occurs.

Signed the______day of____________, 19____, at_______o'clock ____.M.

____
JUDGE PRESIDING

PRACTICE NOTES

SUITS AFFECTING THE PARENT-CHILD RELATIONSHIP (SAPCRs)

INTRODUCTION

Sooner or later a child abuse investigation must end with a conclusion that extended relief is or is not needed. Once a Chapter 17 Emergency Protection suit has been filed, this decision must be made quickly since the children must either be released to their parents, guardian, or conservator or become the subjects of a full-scale SAPCR filed in the proper court. See Section 17.05, Texas Family Code, as Amended by Acts 1975, 64th Leg., P. 1270, ch. 476, § 45, eff. Sept. 1, 1975.

The forms included in this section are specifically designed for child abuse situations. They are derived from the forms contained in Chapters 10 and 18 of the State Bar's Texas Family Practice Manual (1976).

The forms included have been modified and abridged to meet typical situations. The forms are not meant to be universal. Only the following forms are included:

1. Original Petition in Suit Affecting the Parent-Child Relationship;
2. Affidavit in Support of Application for Temporary Relief;
3. Ex Parte Temporary Orders in Suit Affecting the Parent-Child Relationship;
4. Writ of Attachment and Return;
5. Temporary Orders in Suit Affecting the Parent-Child Relationship.

For other forms, including ancillary forms and final decrees, see Chapters 10, 14, and 18 of the Texas Family Practice Manual.

EXPLANATION OF PETITION

The petition combines in one form a request for termination of parental rights and requests for conservatorship and support orders. If termination is not sought, the paragraphs and other language in the petition relating to termination can be deleted without upsetting the structure or content of the rest of the petition.

The petition has been abridged so as to exclude instructions with respect to service of process and requests for a social study and appointment of guardians and attorneys ad litem. Furthermore, no attempt has been made to deal with special problems of citation or with long-arm jurisdiction over non-residents. The form petition contains no provisions for costs or attorney's fees.

ILLEGITIMATE CHILDREN

No attempt has been made to resolve the difficult problems involving children not legitimate as to any man. For a discussion of the rights of the biological fathers of such children, see the recent opinions in the case In re K, 535 S.W.2d 168 (Tex. 1976).

Under Texas law, it appears that biological fathers do not automatically have all the rights of legal parents as defined in Section 11.01(3) of the Family Code. However, if the practitioner is unsure as to the legitimacy status of the children or if for convenience or added caution he prefers to treat the "illegitimate father" as a legal parent, the form petition allows such treatment. In any event, "illegitimate fathers" are entitled (if identifiable) to service of process in a suit to terminate the mother's rights.

No. ________

IN THE INTEREST OF)
)
____________________,) DESIGNATION OF COURT
)
(A) CHILD(REN))

ORIGINAL PETITION IN SUIT AFFECTING PARENT-CHILD RELATIONSHIP

This suit is brought by (NAME OF AGENCY), Petitioner, acting by and through (NAME OF AUTHORIZED AGENT), its (STATE TITLE OR POSITION). Notice and process may be served upon Petitioner at (ADDRESS, CITY, STATE).

1.

No court has continuing jurisdiction of this suit or of the child(ren) identified below as the subject(s) of this suit.

OR

This Court has already acquired continuing jurisdiction of this suit and the child(ren) identified below as the subject(s) of this suit.

2.

The following (child is/children are) the subject(s) of this suit:

NAME ____________________ SEX ____________

BIRTHPLACE ______________ BIRTH DATE ________

PRESENT RESIDENCE ________________________

REPEAT FOR EACH
ADDITIONAL CHILD

3.

To the best of Petitioner's information and belief, the mother of the above-named subject child(ren) is ____(NAME)________, whose age is______, and whose residence is____________________.

4.

To the best of Petitioner's information and belief, the father of the above-named subject child(ren) is ____(NAME)________, whose age is______, and whose residence is____________________.

OR

To the best of Petitioner's information and belief, the above-named subject (child is/children are) not legitimate as to any man and the father of the child(ren) is____________________, whose age is______, and whose residence is____________________.

5.

The following persons are, to the best of Petitioner's information and belief, the only persons having court-ordered relationships with the above-named subject child(ren):

NAME (IF NONE KNOWN, STATE "UNKNOWN")

PRESENT RESIDENCE (IF UNKNOWN, STATE "UNKNOWN")

RELATIONSHIP (E.G., MANAGING CONSERVATOR, POSSESSORY CONSERVATOR, GUARDIAN OF PERSON, GUARDIAN OF ESTATE, GUARDIAN OF PERSON AND ESTATE)

REPEAT FOR EACH PERSON
HAVING A COURT-ORDERED
RELATIONSHIP WITH THE CHILD(REN)

6.

Petitioner at this time lacks information concerning the nature and value of property owned or possessed by the above-named subject child(ren).

OR

No property is owned or possessed by the above-named subject child(ren).

OR

The following property is owned or possessed by the above-named subject child(ren):

DESCRIBE AND STATE VALUE
OF PROPERTY OF EACH CHILD

7.

Petitioner would show that the above-named subject (child is/children are) without proper parental care and support and dependent upon society for protection. In the alternative, Petitioner would show that the (child is/children are) in immediate danger of physical or emotional injury if allowed to remain in their present surroundings without adequate parental care and supervision. Appointment of (STATE NAME OF AGENCY OR INDIVIDUAL) as temporary and permanent managing conservator of the above-named subject child(ren) is in the best interest of the child(ren) so that the child(ren) may receive proper parental care and supervision. Petitioner would further show that temporary and permanent Court orders for the care and protection of the child(ren) are necessary for the reasons set forth in the affidavit(s) attached hereto and incorporated herein for all intents and purposes as (Exhibit "A"/Exhibits "A" - "___").

8.

(NAMES OF PARENTS) (is/are) obligated to support the above-named subject child(ren) and should be ordered to make payments for the support of the child(ren) in such manner as the Court may specify.

9.

Termination of the parent-child relationship between (NAMES OF PARENTS) and the child(ren) is in the best interest of the child(ren), and such termination is requested. As further grounds for termination, Petitioner alleges that (this parent has/these parents have) or will have before this suit is heard:

SELECT ONE OR MORE
OF THE FOLLOWING

voluntarily left the child(ren) alone or in the possession of another not the parent and expressed an intent not to return;

voluntarily left the child(ren) alone or in the possession of another not the parent without expressing an intent to return, without providing for the adequate support of the child(ren), and remained away for a period of at least three months;

voluntarily left the child(ren) alone or in the possession of another not the parent and, although expressing an intent to return, failed to do so without providing adequate support of the child(ren) and remained away for a period of at least six months;

knowingly placed or knowingly allowed the child(ren) to remain in conditions or surroundings which endanger the physical or emotional well-being of the child(ren);

engaged in conduct or knowingly placed the child(ren) with persons who engaged in conduct which endangers the physical or emotional well-being of the child(ren);

failed to support the child(ren) in accordance with (his/her) ability during a period of one year ending within six months of the date of the filing of this petition;

abandoned the child(ren) without identifying the child(ren) or furnishing means of identification, and the child(ren)'s identity cannot be ascertained by the exercise of reasonable diligence;

voluntarily, and with knowledge of the pregnancy, abandoned the child's mother beginning at a time during her pregnancy with the child and continuing through the birth, failed to provide adequate support or medical care for the mother during the period of abandonment before the birth of the child, and remained apart from the child or failed to support the child since the birth;

contumaciously refused to submit to a reasonable and lawful order of a court under Section 34.05 of the Texas Family Code;

been the major cause of the failure of the child(ren) to be enrolled in school as required by the Texas Education Code;

been the major cause of the child(ren)'s absence from the home without the consent of the parents or guardian for a substantial length of time or without the intent to return;

executed an unrevoked or irrevocable affidavit of relinquishment of parental rights as provided by Section 15.03 of the Texas Family Code. (This affidavit of relinquishment is attached to this petition as Exhibit "____.").

IF TERMINATION OF INHERITANCE RIGHTS IS ALSO DESIRED, ADD THE FOLLOWING OPTIONAL SENTENCE

It is in the best interest of the child(ren) that the Court terminate the right of the child(ren) to inherit from and through (NAMES OF PARENTS).

10.

Based upon the conduct of (NAMES OF PARENTS OR OTHER PERSONS TO BE ENJOINED), as described in the affidavit(s) attached hereto and incorporated herein for all intents and purposes as (Exhibit "___"/Exhibits "___" - "___"), Petitioner believes that (NAMES OF PARENTS OR OTHER PERSONS) will attempt to molest or disturb the child(ren) and persons in whose care the child(ren) may be placed. Petitioner further believes that (NAMES OF PARENTS OR OTHER PERSONS) may attempt to remove the child(ren) from the care of any temporary managing conservator appointed in these proceedings or from the jurisdiction of this Court. Disturbance or removal of the child(ren) would cause the child(ren) immediate and irreparable physical or emotional injury for which there is no adequate remedy at law.

PRAYER

Petitioner prays that citation and notice issue as required by law, that the Court determine what parent-child relationships exist between the child(ren) (NAMES) and any other persons, that all such parent-child relationships be terminated, (that the right of the child(ren) to inherit from and through the legal and biological parents of the child(ren) be terminated,), that (NAME OF PERMANENT MANAGING CONSERVATOR) be appointed Managing Conservator of the above-named subject child(ren), and that (NAMES OF PARENTS) be ordered to make payments for the support of the above-named subject child(ren).

Petitioner prays that the Court issue, immediately and without notice, such orders for the care and protection of the child(ren) (NAMES) as the Court may deem appropriate under the circumstances. Petitioner further prays that (NAME OF TEMPORARY MANAGING CONSERVATOR) be appointed Temporary Managing Conservator of the child(ren) (NAMES), that (NAMES OF PARENTS) be ordered to make payments for the temporary support of the child(ren), and that (NAMES OF PARENTS OR OTHER PERSONS) be temporarily restrained, immediately and without notice, and enjoined, following notice and hearing, from: (1) molesting or disturbing the child(ren); (2) interfering in any way with the temporary managing conservator's possession of the child(ren) by taking or attempting to take possession of the child(ren), directly or through any other person, from any place where the child(ren) may be; and (3) removing the child(ren) from the jurisdiction of this Court.

IF APPLICABLE, ADD
THE FOLLOWING PARAGRAPH

Petitioner prays that Petitioner be authorized to take immediate possession of the child(ren).

CONTINUE WITH THE
FOLLOWING SENTENCE

Petitioner prays for general relief.

____
(Petitioner / Attorney for Petitioner)

____
Address

THE STATE OF TEXAS)
)
COUNTY OF____________)

Before me, the undersigned authority, on this day personally appeared_____(NAME OF AFFIANT)_____, Affiant, who having been by me first duly sworn, upon oath stated: "My name is ________________________, and I am authorized to execute this Affidavit in my capacity as___(STATE TITLE OR POSITION)___of ___(NAME OF PETITIONING AGENCY)_____. I have read the above and foregoing Original Petition in Suit Affecting Parent-Child Relationship, and all allegations stated therein are true and correct."

____
(NAME OF AFFIANT), Affiant

Sworn to and subscribed before me by Affiant this______day of_____________, 19____, to certify which witness my hand

and seal of office.

____
Notary Public in and for
_______________County, Texas

My Commission Expires___________

No. ________

IN THE INTEREST OF)
)
____________________,) DESIGNATION OF COURT
)
(A) CHILD(REN))

AFFIDAVIT IN SUPPORT OF APPLICATION FOR TEMPORARY RELIEF

THE STATE OF TEXAS)
)
COUNTY OF____________)

Before me, the undersigned authority, on this day personally appeared_____(NAME)_________, Affiant, who, having been by me first duly sworn, upon oath stated:

"My name is______(NAME)_______. I am the___(STATE TITLE OR POSITION)____of_____(NAME OF AGENCY)____. I am______years of age and have worked with the___(NAME OF AGENCY)___for______ years.

WITHIN QUOTATION MARKS,
HERE STATE PROFESSIONAL
TRAINING AND EXPERIENCE

"On the______day of______________, 19____, I first became aware of the circumstances of the child(ren)______(NAMES)____.

CONTINUE WITH A NARRATIVE STATING HOW THE PROBLEM CAME TO AFFIANT'S ATTENTION, WHAT AFFIANT DID TO INVESTIGATE THE PROBLEM, WHAT AFFIANT LEARNED FROM HIS OWN PERSONAL OBSERVATIONS, AND WHAT AFFIANT WAS TOLD BY OTHERS. HEARSAY SHOULD BE CLEARLY IDENTIFIED AS SUCH. FOR EXAMPLE, "MR. X, WHO IS

A NEIGHBOR OF MR. AND MRS. ALLEGED ABUSER, TOLD ME THAT ON APRIL 1, 1975, ABOUT 3:00 P.M., HE SAW MR. ABUSER STRIKE THE INFANT REPEATEDLY WITH A BELT OR STRAP."

"The (child is/children are) presently in the possession of (NAME) at (ADDRESS, CITY, STATE).

"Based on this information, I have concluded that the child(ren) (NAMES) are dependent upon society for protection and that the child(ren) will suffer continued physical and emotional injury unless protective orders for the care of the child(ren) are immediately issued by this Court. I have further concluded that irreparable physical and emotional injury will result to the child(ren) if (NAMES OF PARENTS OR OTHER PERSONS TO BE RESTRAINED AND ENJOINED) are allowed to remove the child(ren) from the jurisdiction of this Court or otherwise interfere with the possession of the child(ren) by a temporary managing conservator duly appointed by this Court."

(NAME OF AFFIANT), Affiant

Sworn to and subscribed by Affiant before me this______day of_______________, 19____, to certify which witness my hand and seal of office.

____
Notary Public in and for
________________County, Texas

My Commission Expires___________

No. ________

IN THE INTEREST OF)
)
____________________,) DESIGNATION OF COURT
)
(A) CHILD(REN))

EX PARTE TEMPORARY ORDERS IN SUIT AFFECTING PARENT-CHILD RELATIONSHIP

On this day the Original Petition in this cause was presented to me in chambers without notice of hearing.

Petitioner (NAME OF PETITIONING AGENCY) appeared by and through (NAME OF REPRESENTATIVE), its (REPRESENTATIVE'S TITLE OR POSITION), and by attorney.

The Court, having examined the pleadings and heard the evidence, finds that it has jurisdiction to issue this Order pursuant to Section 11.11, Texas Family Code.

Based upon Petitioner's sworn statements, the Court finds that it is in the best interest of the child(ren) (NAMES) that (NAME OF TEMPORARY MANAGING CONSERVATOR) be appointed Temporary Managing Conservator of the child(ren) and that immediate and irreparable injury, loss or damage, for which there is no adequate remedy at law, will result to the above-named subject child(ren) unless the following orders are issued.

It is therefore ORDERED that (NAME OF TEMPORARY MANAGING CONSERVATOR) be and is hereby appointed Temporary Managing Conservator of the child(ren) (NAMES) and as Temporary Managing Conservator shall have the following rights, privileges, duties and powers:

(1) the right to have physical possession of the child(ren);

(2) the duty of care, control, protection and reasonable discipline of the child(ren);

(3) the duty to provide the child(ren) with clothing, food, shelter, and education;

(4) the power to consent to medical, psychiatric, and surgical treatment of the child(ren); and

(5) the power to represent the child(ren) in legal action and make other decisions of substantial legal significance concerning the child(ren).

It is further ordered that (NAMES OF PARENTS OR OTHER PERSONS RESTRAINED) (is/are) temporarily restrained and prohibited from:

(1) molesting or disturbing the above-named subject child(ren);

(2) interfering in any way with (NAME OF TEMPORARY MANAGING CONSERVATOR)'s possession of the child(ren) by taking or attempting to take possession of the child(ren), directly or through any other person, from any place where the child(ren) may be; and

(3) removing the child(ren) from the jurisdiction of this Court.

It is further ordered that Respondent(s) (NAMES OF PARENTS

AND OTHER PERSONS ENTITLED TO SERVICE OF CITATION) ____appear before me on the______day of___________________, 19____, at _________o'clock____.M., in the Courtroom of the________________ Court of______________________County, Texas, in the Courthouse at ______(ADDRESS)_______, ______(CITY)________, Texas, to show cause why during the pendency of this cause:

(a) (NAME OF TEMPORARY MANAGING CONSERVATOR) should not be appointed temporary managing conservator of the child(ren)____(NAMES)____;

(b) Respondent(s) (NAMES)______should not be ordered to make payments for the temporary support of the child(ren)________(NAMES)______;

(c) Respondent(s) (NAMES)______should not be temporarily enjoined during the pendency of this suit from: (1) molesting or disturbing the child(ren)___(NAMES)_; (2) interfering in any way with___(NAME OF TEMPORARY MANAGING CONSERVATOR)'s possession of the child(ren) by taking or attempting to take possession of the child(ren), directly or through any other person, from any place where the child(ren) may be; and (3) removing the child(ren) from the jurisdiction of this Court; and

(d) the Court should not make such other and further orders as may be necessary for the safety and welfare of the child(ren).

INCLUDE IF APPLICABLE

IT IS FURTHER ORDERED by the Court that the Clerk forthwith issue a Writ of Attachment commanding any sheriff or constable within the State of Texas to take the body (bodies) of the child(ren) ___(NAMES)___ and deliver said child(ren) safely into the possession of ___(NAME OF PETITIONER)___ at ___(ADDRESS)___.

CONTINUE WITH THE FOLLOWING

These orders shall be effective immediately and shall remain in full force and effect until further orders are issued in this proceeding following the hearing scheduled above. No bond shall be required in connection with these orders.

Signed the_____day of____________, 19____, at_____o'clock ___.M.

____
JUDGE PRESIDING

WRIT OF ATTACHMENT

THE STATE OF TEXAS

TO any sheriff or any constable within the State of Texas

GREETINGS:

Whereas there is pending in the ____(DESIGNATE COURT)____ of ____________ County, Texas, cause number ____________, said cause being styled ____;

and

Whereas on the _____ day of _________________, 19____, said Court issued its order in said cause ordering the issuance of this Writ of Attachment, a certified copy of which order is attached to this Writ:

You are commanded to take the body (bodies) of the child(ren) ____(NAMES)_____ and deliver said child(ren) safely into the possession of ___ (NAME OF PETITIONER)____ at (ADDRESS, CITY, STATE) , where delivery of said child(ren) may be made.

Herein fail not, but make due return of this Writ instanter.

Given under my hand and the seal of said Court on this ______ day of ________________, 19____.

____
Clerk of the __________________
Court of _________ County, Texas

By ____________________________
Deputy

RETURN

Came to hand on this______day of______________, 19____, at ________o'clock____.M., and executed on the_____day of_________, 19____, at______o'clock_____.M., by taking the body (bodies) of the herein described person(s) and delivering said person(s) to _____________________________, as herein directed.

I actually and necessarily traveled________miles in the execution of this writ, and my fees are $______________.

The original returned this_____day of______________, 19____.

____
(Sheriff/Constable) of
________________County, Texas

By____________________________
Deputy

No. ________

IN THE INTEREST OF)
)
____________________,) DESIGNATION OF COURT
)
(A) CHILD(REN))

TEMPORARY ORDERS IN SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

On the______day of_______________, 19____, came on to be heard the application of Petitioner for temporary orders.

Petitioner____(NAME OF PETITIONING AGENCY)_____appeared by and through____(NAME OF REPRESENTATIVE)_____, its (REPRESENTATIVE'S TITLE OR POSITION)_____, and by attorney.

Respondent____(NAME)________

SELECT ONE

appeared in person and announced ready.

appeared by attorney and announced ready.

appeared in person and by attorney and announced ready.

although duly and properly cited, did not appear.

REPEAT FOR EACH RESPONDENT OR PARTY ENTITLED TO CITATION

The Court, having considered the pleadings and heard the evidence and argument of counsel, finds that all necessary prerequisites of the law have been legally satisfied and that this Court has jurisdiction over the parties and subject matter of this cause.

The Court finds that it is in the best interest of the child(ren) (NAMES) that (NAME OF TEMPORARY MANAGING CONSERVATOR) be appointed temporary managing conservator of the child(ren) and that this Court issue the following orders for the safety and welfare of the child(ren).

It is therefore ORDERED that (NAME OF TEMPORARY MANAGING CONSERVATOR) be and is hereby appointed Temporary Managing Conservator of the child(ren) (NAMES) and as Temporary Managing Conservator shall have the following rights, privileges, duties and powers:

(1) the right to have physical possession of the child(ren);

(2) the duty of care, control, protection, and reasonable discipline of the child(ren);

(3) the duty to provide the child(ren) with clothing, food, shelter, and education;

(4) the right to the services and earnings of the child(ren);

(5) the power to consent to marriage, to enlistment in the armed forces of the United States, and to medical, psychiatric, and surgical treatment;

(6) the power to represent the child(ren) in legal

action and to make other decisions of substantial legal significance concerning the child(ren); and (7) the power to receive and give receipt for periodic payments for the support of the child(ren) and to hold or disburse these funds for the benefit of the child(ren).

IF A POSSESSORY CONSERVATOR IS APPOINTED, USE THE FOLLOWING FIVE PARAGRAPHS

It is ORDERED that (NAME OF TEMPORARY POSSESSORY CONSERVATOR) be and is hereby appointed Temporary Possessory Conservator of the following child(ren): (NAMES).

It is ORDERED that the Temporary Possessory Conservator shall have (possession of/access to) the child(ren) as follows:

SET OUT TIMES AND CONDITIONS FOR POSSESSION OF OR ACCESS TO EACH CHILD

It is ORDERED that the Temporary Managing Conservator shall surrender the child(ren) to the Temporary Possessory Conservator at the beginning of each period of possession.

It is ORDERED that the Temporary Possessory Conservator shall return the child(ren) to the Temporary Managing Conservator immediately following each period of possession.

It is ORDERED that the Temporary Possessory Conservator shall have the following rights, privileges, duties, and powers during periods of possession:

(1) the duty of care, control, protection, and reasonable discipline of the child(ren);

(2) the duty to provide the child(ren) with clothing, food, and shelter; and

(3) the power to consent to medical and surgical treatment during an emergency involving an immediate danger to the health and safety of the child(ren).

CONTINUE WITH ANY OTHER RIGHT, ETC.,
GRANTED TO POSSESSORY CONSERVATOR

IF A PARTY IS GIVEN ACCESS RIGHTS
BUT IS NOT APPOINTED POSSESSORY
CONSERVATOR, USE THE FOLLOWING
PARAGRAPH

It is ORDERED that (NAME) shall have access to the child(ren) (NAMES) as follows:

SET OUT TIMES AND CONDITIONS OF
ACCESS TO THE CHILD(REN)

IF CHILD SUPPORT IS ORDERED, FOR
EACH PARENT OBLIGATED TO PAY CHOOSE
ONE OF THE THREE FOLLOWING PARAGRAPHS

It is ORDERED that (NAME OF PARENT) pay to (NAME OF

TEMPORARY MANAGING CONSERVATOR)_____for support of_____(NAMES OF CHILDREN)______the sum of $_______________ per month, with the first payment being due and payable on the____day of__________, 19____, and a like payment being due and payable on the same day of each month thereafter until further order of this Court. All such support payments are to be made through (NAME AND ADDRESS OF LOCAL COLLECTING AGENCY)___.

OR

It is ORDERED that___(NAME OF PARENT)_____pay to___(NAME OF TEMPORARY MANAGING CONSERVATOR)_____for support of_____(NAMES OF CHILDREN)_____the sum of $____________per month, in two installments per month of $__________each, with the first installment being due and payable on the______day of______________, 19____, and a like installment being due and payable on the_______and ___________days of each month thereafter until further order of this Court. All such support payments are to be made through ___(NAME AND ADDRESS OF LOCAL COLLECTING AGENCY)____.

OR

It is ORDERED that___(NAME OF PARENT)____pay to___(NAME OF TEMPORARY MANAGING CONSERVATOR)_____for support of_____(NAMES OF CHILDREN)______the sum of $____________per week, beginning on (NAME OF DAY)___, the______day of________________ 19____, with a like payment due and payable on each (NAME OF DAY) thereafter until further order of this Court. All such support payments are to be made through (NAME AND ADDRESS OF LOCAL COLLECTING AGENCY).

It is further ORDERED that (NAMES OF PARENTS OR OTHER PERSONS ENJOINED) (is/are) temporarily enjoined and prohibited from:

(1) molesting or disturbing the above-named subject child(ren);

(2) interfering in any way with (NAME OF TEMPORARY MANAGING CONSERVATOR)'s possession of the child(ren) by taking or attempting to take possession of the child(ren), directly or through any other person, from any place where the child(ren) may be, except as provided by these orders; and

(3) removing the child(ren) from the jurisdiction of this Court.

These orders shall be effective immediately and shall remain in full force and effect during the pendency of this suit unless earlier modified by order of this Court. No bond shall be required in connection with these orders.

INCLUDE IF APPLICABLE

The parties have agreed to the terms of this order as evidenced by the signatures below.

CONTINUE WITH THE FOLLOWING

SIGNED this______day of_________________, 19____.

____
JUDGE PRESIDING

PROVIDE FOR APPROVAL
OF PARTIES OR ATTORNEYS
IF APPLICABLE

____

Child Care Licensing Act of 1975

State Department of Public Welfare

THE STATE OF TEXAS

The State of Texas

SECRETARY OF STATE

I, MARK WHITE, Secretary of State of the State of Texas, DO HEREBY CERTIFY that the attached is a true and correct copy of Senate Bill No. 965 as passed by the 64th Legislature, Regular Session, 1975, signed by the Governor on June 21, 1975, and filed in this office on June 21, 1975.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in the City of Austin, this

.... day of .... A. D. 19........

Mark White

Secretary of State

AN ACT

relating to the regulation of certain child care facilities and child placing agencies by the State Department of Public Welfare through a division of the department; authorizing advisory committees; providing for licensure, certification, or registration of certain child care facilities and child placing agencies; providing the powers and duties of the State Department of Public Welfare and the division within the department; relating to the immunization of children and the duties of the State Department of Health in regard thereto; requiring certain records; requiring certain reports by the division to the governor; providing for administrative and judicial appeals; providing extent of application of the Administrative Procedure and Texas Register Act; providing sanctions and penalties for certain violations; providing enforcement procedures; providing a saving clause and an effective date; repealing Section 8(a) of the Public Welfare Act of 1941, as amended (Article 695c, Vernon's Texas Civil Statutes); and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS;

Section 1. (a) TITLE. This Act may be cited as the Child Care Licensing Act.

(b) LEGISLATIVE INTENT AND DECLARATION OF PURPOSE AND POLICY. It is the legislative intent to protect the health, safety, and well-being of the children of the state who reside in child care facilities. Toward that end, it is the purpose of this Act to establish statewide minimum standards for the safety and protection of children in child care facilities, to insure maintenance of these standards, and to regulate such conditions in such facilities through a program of licensing. It shall be the policy of the state to insure protection of children under care in child care facilities, and to encourage and assist in the improvement of child care programs. It is the further legislative intent that the freedom of religion of all citizens shall be inviolate. Nothing in this Act shall give any governmental agency jurisdiction or authority to regulate, control, supervise, or in any way be involved in the form, manner, or content of any religious instruction or the curriculum of a school sponsored by a church or religious organization.

Sec. 2. DEFINITIONS. As used in this Act:

(1) "Department" means the State Department of Public Welfare.

(2) "Division" means the division established or designated by the State Department of Public Welfare to carry out the provisions of this Act.

(3) "Child care facility" means a facility providing care, training, education, custody, treatment, or supervision for a child who is not related by blood, marriage, or adoption to the owner or operator of the facility, for all or part of the 24-hour day, whether or not the facility is operated for profit, and whether or not the facility makes a charge for the service offered by it.

(4) "Child" means an individual under 18 years of age.

(5) "Person" includes an individual, a public or private agency, an association, or a corporation.

(6) "Child caring institution" means a child care facility which provides care for more than 12 children for 24 hours a day, including facilities known as children's homes, halfway houses, residential treatment camps, emergency shelters, and training or correctional schools for children.

(7) "Foster group home" means a child care facility which provides care for 7 to 12 children for 24 hours a day.

(8) "Foster family home" means a child care facility which provides care for not more than 6 children for 24 hours a day.

(9) "Day care center" means a child care facility which provides care for more than 12 children under 14 years of age for less than 24 hours a day.

(10) "Group day care home" means a child care facility which provides care for 7 to 12 children under 14 years of age for less than 24 hours a day.

(11) "Registered family homes" means a child care facility which regularly provides care in the caretaker's own residence for not more than 6 children under 14 years of age, excluding the caretaker's own children, and which provides care after school hours for not more than 6 additional elementary school siblings of the other children given care, provided that the total number of children including the caretaker's own does not exceed 12 at any given time.

(12) "Family day home" means a child care facility which provides care for not more than 6 children under 14 years of age for less than 24 hours a day not in the caretaker's own residence nor in the residence of one or more of such children.

(13) "Agency home" means a private home providing care for not more than 6 children, which is used only by a licensed child placing agency, and which meets division standards.

(14) "Child placing agency" means a person other than the natural parents or guardian of the child who plans for the placement of or places a child in an institution, agency home, or adoptive home.

(15) "State of Texas" or "state" does not include political subdivisions of the state.

(16) The term "facilities" without the modifier "child care" includes child care facilities and child placing agencies.

Sec. 3. DIVISION. (a) The State Department of Public Welfare shall establish or designate a division within the department for the licensure and regulation of child care facilities and child placing agencies and the enforcement of the provisions of this Act and the regulations and standards adopted pursuant thereto and such other duties and responsibilities as the department may delegate or assign.

(b) The commissioner of the department shall appoint as director of the division an individual qualified in one of the following ways:

(1) by meeting the qualifications required of a child care administrator by Chapter 231, Acts of the 63rd Legislature, Regular Session, 1973 (Article 695a-1, Vernon's Texas Civil Statutes);

(2) by holding a graduate degree in social science or law and having five years administrative experience in a field related to child care; or

(3) by having 10 years' experience in a field related to child care, at least five of which must be administrative.

(c) The department shall employ sufficient personnel and shall provide adequate training to the persons employed to carry out the provisions of this Act.

(d) The director may divide the state into regions for the purposes of administering this Act.

Sec. 4. REQUIRED LICENSE. (a) No person may operate a child care facility or child placing agency unless he holds a valid license issued by the division.

(b) This section does not apply to:

(1) state-operated facilities;

(2) agency homes;

(3) facilities operated in connection with a church, shopping center, business, or establishment where children are cared for during short periods of time while parents or individuals in charge of the children are attending church services, shopping, or engaging in other activities on or near the premises, which with respect to churches or other religious institutions shall include but not be limited to Sunday school, retreats, or weekly catechism or other schools or classes for religious instruction;

(4) schools or classes for religious instruction conducted by churches during the summer months for not more than two weeks, known as vacation Bible schools;

(5) youth camps licensed by the State Department of Health;

(6) hospitals licensed by the Texas Department of Mental Health and Mental Retardation or the State Department of Health;

(7) an educational facility accredited by the Central Education Agency or the Southern Association of Colleges and Schools that

operate primarily for educational purposes in grades kindergarten and above;

(8) an educational facility that operates solely for educational purposes in grades kindergarten through at least grade two and does not provide custodial care for more than one hour during the hours before or after the customary school day, and are members of an organization which promulgates, publishes, and requires compliance with the health, safety, fire, and sanitation standards at least equal to those required by state, municipal, and county health, safety, fire, and sanitation codes;

(9) kindergarten or preschool educational programs operated as part of the public schools of this state or of private schools accredited by the Central Education Agency that offer educational programs through grade six and that do not provide custodial care during the hours before or after the customary school day.

(10) registered family homes as defined in Section 2 of this Act.

(c) In the event that a child caring institution operates facilities that are noncontiguous, but of a near proximity and demonstratable singleness of operation (as determined by patterns of staffing, finance, administrative supervision, and programs) a single license may be issued to the institution noting the addresses and facilities appropriate.

Sec. 5. RULES, REGULATIONS, AND STANDARDS. (a) The department shall promulgate reasonable rules and regulations to carry out the provisions of this Act.

(b) The department shall promulgate minimum standards for child care facilities covered by this Act which will:

(1) promote the health, safety, and welfare of children attending any facility;

(2) promote safe, comfortable, and healthy physical facilities for children;

(3) insure adequate supervision of the children by capable, qualified, and healthy personnel;

(4) insure adequate and healthy food service, where it should be offered;

(5) prohibit racial discrimination by child care facilities; and

(6) include procedures by which parents and guardians are given opportunity for consultation in formulation of the children's educational and therapeutic programs.

(c) In promulgating minimum standards for child care facilities, the department should take cognizance of the various categories of facilities, including facilities offering specialized care, and the various categories of children and their particular needs. Standards for child care institutions must require an intake study before a child is placed in an institution. The study may be conducted at a community mental health and mental retardation center.

(d) In promulgating minimum standards the department may take cognizance of, and may differentiate with respect to, the following child care facilities: child caring institutions, foster homes, day care centers, group day care homes, family day homes, registered family homes, and agency homes.

(e) The department shall promulgate minimum standards for child placing agencies.

(f) The department shall promulgate standard forms for applications and inspection reports.

(g) The department shall promulgate a standard procedure for receiving and recording complaints and a standard form for complaints.

(h) Before adoption of minimum standards, the division shall present the proposed standards to the State Advisory Committee on Child Care Facilities for its review and comment and shall send a copy of the proposed standards to each licensee covered by the proposed minimum standards at least 60 days prior to the effective date of the proposed standards in order to enable the persons to review the proposed standards and make written suggestions to the department and the council.

(i) A comprehensive review of all standards, rules, and regulations must be made at least every six years.

(j) The department shall not regulate or attempt to regulate or control the content or method of any instruction or the curriculum of a school sponsored by a church or religious organization.

(k) The department may in specific instances waive the compliance with a minimum standard on a determination that the economic impact is sufficiently great to make such compliance impractical.

Sec. 6. RULES RELATING TO IMMUNIZATION OF CHILDREN. (a) The department shall promulgate rules and regulations relating to immunization of children admitted to facilities.

(b) The rules shall require the immunization of each child at an appropriate age against diphtheria, tetanus, poliomyelitis, rubella, and rubeola and a test for tuberculosis, and the immunization must be effective on the date of first entry into the facility; provided, however, a child may be provisionally admitted if he has begun the required immunizations and if he continues to receive the necessary immunizations as rapidly as is medically feasible.

(c) The State Department of Health shall promulgate rules and regulations relating to the provisional admission of children to facilities. The State Board of Health may modify or delete any of the immunizations listed in this section or may require immunization against additional diseases as a requirement for admission to facilities; but no form of immunization shall be required for a child's admission to a facility if the person applying for the child's admission submits either an affidavit signed by a doctor in which it is stated that, in the doctor's opinion, the immunization would be injurious to the health and well-being of the child or of any member of his family or household, or an affidavit signed by the parent or guardian of the child stating that the immunization conflicts with the tenets and practice of a recognized church or religious denomination of which the applicant is an adherent or member.

(d) Each facility shall keep an individual immunization record for each child admitted, and the records shall be open for inspection by the division at all reasonable times.

(e) The State Department of Health shall provide the required immunizations to children in areas where no local provision exists to provide these services.

Sec. 7. INSPECTION. (a) An authorized representative of the division may visit a child care facility or child placing agency during the hours of operation for purposes of investigation, inspection, and evaluation.

(b) The division shall inspect all facilities licensed or certified by the division at least once a year and may inspect other facilities as necessary. At least one of the yearly visits must be unannounced, and all may be unannounced.

(c) An investigation visit must be made if a complaint is received by the division. The division representative must notify the director or authorized representative of the director of the facility being investigated that a complaint is being investigated. The results of the investigation must be reported in writing to the director.

(d) The division may call on political subdivisions and governmental agencies for appropriate assistance within their authorized fields.

Sec. 8. CONSULTATION. (a) The department shall offer consultation to potential applicants, applicants, licensees, and holders of certification in meeting and maintaining standards for licensing and certification and in achieving programs of excellence related to the care of children served.

(b) The department shall offer consultation to prospective and actual users of facilities.

Sec. 9. ADVISORY OPINIONS AND DECLARATORY ORDERS. (a) The director of the division may give advisory opinions on compliance of planned facilities or planned changes in existing facilities with division rules, regulations, and minimum standards.

(b) If a written opinion signed by the director of the division and the division representative administering this Act in a division region is acted on by an applicant or licensee, it is binding upon the division as a declaratory order.

Sec. 10. RECORDS. (a) All persons operating a licensed or certified child care facility or child placing agency shall maintain individual child development records, individual health records, statistical records, and complete financial records.

(b) All persons operating a licensed facility, other than a child care facility which provides care for less than 24 hours a day, or an agency home, shall have its books audited annually by a certified public accountant and include a copy of the accountant's statement of income and disbursements with each application for a license.

Sec. 11. ISSUANCE OF LICENSE. (a) A person desiring to operate a child care facility or child placing agency shall apply in writing to the division for a license.

(b) The division shall supply the applicant with the appropriate application forms and a copy of the appropriate minimum standards.

(c) On receipt of the application, the division shall conduct an investigation of the applicant and the plan of care for children.

(d) The division shall complete its investigation and render a decision on the application within two months after receipt of the application.

(e) If the division determines that the facility has reasonably satisfied all requirements, it shall issue a license.

(f) In issuing a license, the division may impose restrictions on the facility, including, but not limited to, the number of children to be served and the type of children to be served.

(g) A variance of an individual standard set forth in the standards may be granted for good and just cause by the division.

(h) A license applies only to the location stated on the application and license issued and is not transferable from one person to another or from one place to another. If the location of the facility is changed or the owner of the facility is changed, the license is automatically revoked.

(i) The licensee must display the license in a prominent place at the facility.

(j) Prior to expiration of its license, a facility may apply for a new license in accordance with the provisions of this Act and the rules and regulations promulgated by the division. The application must be completed and acted on prior to the expiration of a license. Evaluation to determine if the applying facility meets all requirements must include a specified number of visits to the facility and review of all required forms and records.

Sec. 12. PROVISIONAL LICENSE. (a) The division shall issue a provisional license to a facility whose plans meet the department requirements but which is (1) not currently operating, (2) not licensed for the location stated in the application, or (3) changing ownership.

(b) A provisional license is valid for six months from the date of issuance and is nonrenewable.

Sec. 13. BIENNIAL LICENSE. (a) A biennail license will be issued if the division determines that the facility meets all requirements on a continuing basis. The evaluation shall be based on a specified number of visits to the facility and a review of all required forms and records.

(b) A biennial license shall be valid for two years.

Sec. 14. CERTIFICATION AND REGISTRATION. (a) Child care facilities and child placing agencies operated by the state, and registered family homes, are exempt from the licensing requirements of this Act, but state operated facilities must receive certification of approval from the division and registered family homes must be registered.

(b) To be certified, the facilities must meet all department standards, rules and regulations, and provisions of this Act that apply to licensed facilities of the same category. The operator of a certified facility must display the certification in a prominent place at the facility. Certification of approval must be renewed every two years.

(c) To be registered, the facility must meet department standards, rules, regulations, and provisions of this Act that apply to registered facilities.

Sec. 15. AGENCY HOMES. (a) An agency home is exempt from the licensing requirements of this Act but shall be considered part of the child placing agency operating the home when the agency is licensed.

(b) The agency homes must meet all department standards, rules and regulations, and provisions of this Act that apply to child care facilities caring for a similar number of children for a similar number of hours each day.

(c) The operator of the licensed agency must display a copy of the license in a prominent place at an agency home used by the agency.

(d) If an agency home fails to meet the requirements of Subsection (b) of this section, the division shall suspend or revoke the license of the child placing agency.

Sec. 16. STATE ADVISORY COMMITTEE. (a) The State Advisory Committee on Child Care Facilities is hereby established.

(b) The commissioner of the department shall appoint 15 citizens to serve as members of the committee for terms of two years.

(c) The members must represent the following groups:

(1) parents, guardians, or custodians of the children who use the facilities;

(2) child advocacy groups;

(3) operators of the facilities; and

(4) experts in various professional fields which are relevant to child care and development.

(d) At least three members of the division staff shall meet with the committee, and the division shall provide staff necessary for the committee.

(e) The committee shall review rules and regulations and minimum standards relating to child care facilities and child placing agencies promulgated by state agencies, and shall advise the department and the division, the council, and state agencies on problems of child care facilities and child placing agencies.

(f) The committee shall receive and review the annual report of the division.

(g) The committee shall meet twice a year, and the members shall receive their actual travel expenses and the state per diem.

Sec. 17. ANNUAL REPORT. (a) The division shall present to the governor, lieutenant governor, and members of the legislature an annual report of its activities.

(b) The annual report must include:

(1) a report by regions of applications; provisional licenses issued, denied, suspended, and revoked; licenses issued, denied, suspended, and revoked; emergency closures and injunctions; and compliance of state operated agencies with certification requirements;

(2) a summary of the amount and kinds of in-service training and other professional growth opportunities provided to division staff;

(3) a summary of training and other professional growth opportunities offered to child care facilities staff;

(4) a report of new administrative procedures, of the number of staff and staff changes, and of plans for the coming year.

(c) Copies of the annual report shall be made available to any citizen of the state upon request.

Sec. 18. SUSPENSION. (a) If a facility has temporarily suspended operations but has definite plans for renewing operations within the time limits of the issued license, the division may suspend the license.

(b) If the division finds repeated noncompliance with standards that do not endanger the health or safety of the children, the division has the option of suspending the license for a definite period of time instead of denying or revoking the license. In order to qualify for suspension under this subsection, the facility must:

(1) show it can meet the standards within the suspension period, and

(2) suspend its operations.

(c) If a facility does not comply with standards after the suspension, the division must deny or revoke its license.

Sec. 19. DENIAL OR REVOCATION. (a) If the division finds that a facility does not comply with the provisions of this Act, the department standards, department rules and regulations, or the specific terms of a license or certification, it must deny or revoke the license or certification of approval.

(b) The division must notify the person operating or proposing to operate the facility of the reasons for the denial or revocation and the person's right of appeal within 30 days of receipt of the director's notification.

(c) If the person wishes to appeal, he must notify the director by certified mail within 30 days and must state in the notification the reasons against denial or revocation. The person must send a copy of the notification to the assigned division representative.

(d) Within two weeks following the date the appeal notification was mailed, the director shall notify the person that the request for an appeal hearing is denied, or he shall appoint an advisory review board to hear the appeal.

(e) Within two weeks following notification to the person that an advisory review board will hear his case, the director shall appoint five of the person's peers to an advisory review board and shall set a date for the hearing. The date for the hearing must be within four weeks following the date of the appointment of the members.

(f) The advisory review board shall hear the appeal and render an advisory opinion to the director within one week of the hearing. The board members shall receive actual travel expenses and state per diem for each day of the hearing.

(g) The advisory opinion will be reviewed by a committee composed of the director, the division representative responsible for establishing standards, and the division representative administering this Act in the region in which the facility is located. The committee shall render a decision within two weeks after receiving the advisory opinion and shall notify by certified mail the person of its decision.

(h) Within 30 days after receipt of the committee's decision, the person whose license has been denied or revoked may challenge the decision in a suit filed in a district court of Travis County or the county in which the facility is located. The trial shall be de novo.

(i) On request by a person challenging a division decision in a court suit, the division shall supply him with a copy of the verbatim transcript of his advisory review board hearing, at his expense. Records of the hearing shall be kept for one year after a final decision is rendered.

(j) Unless the division uses the procedures set forth in Section 22 or 23 of this Act, a person may continue to operate a facility during an appeal of the denial or revocation of its license.

Sec. 20. The Administrative Procedure Act, S. B. No. 41, Acts of the 64th Legislature, Regular Session, 1975, applies to all procedures and proceedings under this Act, except where it is contrary or inconsistent with the provisions of this Act, in which case the provisions of this Act shall govern.

Sec. 21. CLOSURE OF A FACILITY. (a) If the division finds any violation of this Act or the department's minimum standards or rules and regulations by a facility other than a state-operated facility that places the children in the facility in immediate peril, it may close the facility and place the children attending the facility in another facility.

(b) A division representative finding conditions that place children in a facility in peril shall immediately contact the director of the division and request the director or his designee to immediately inspect the facility for verification of the conditions.

(c) If the division finds any violation of this Act or the department's minimum standards or rules and regulations by a state operated facility that threatens serious harm to the children in the facility, the division representative shall immediately report the finding to the governor and the commissioner of the department.

(d) Closure under this section is an emergency measure. After closing a facility, the division must seek an injunction against continued operation of the facility as prescribed in Section 22 of this Act.

Sec. 22. INJUNCTIVE RELIEF. (a) Whenever it appears that a person has violated or is violating or threatening to violate any provision of this Act or of any rule, regulation, or standard of the department, the division may cause a civil suit to be instituted in a district court of Travis County or in the county in which the facility is located, for injunctive relief, including temporary restraining orders, to restrain the person from continuing the violation or threat of violation, or for the assessment and recovery of a civil penalty of not less than $50 nor more than $1,000 for each day of violation and for each act of violation, as the court may deem proper, or for both injunctive relief and civil penalties. Upon application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this Act or of any rule, regulation, standard, or order of the board, the district court shall grant the injunctive relief the facts may warrant.

(b) At the request of the division, the attorney general shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty, or for both injunctive relief and penalty, as authorized in Subsection (a) of this section.

Sec. 23. CIVIL PENALTY. Any person who violates any provision of this Act or rule, regulation, or standard of the department which threatens serious harm to the children in the facility, or who violates any provision of this Act or rule, regulation, or standard of the department three or more times within a period of a year, or who operates a facility without a license or certification as required under this Act, or who places a public advertisement for an unlicensed facility, is subject to a civil penalty of not less than $50 nor more than $1,000 for each day of violation and for each act of violation, as the court may deem proper. Civil penalties shall be cumulative and in addition to the remedies of injunction and criminal penalties provided in this Act.

Sec. 24. CRIMINAL PENALTY. (a) A person operating a child care facility or child placing agency without a license is guilty of a Class B misdemeanor.

(b) A person placing a public advertisement for an unlicensed facility is guilty of a Class C misdemeanor.

Sec. 25. PRIOR ISSUED LICENSES. Licenses issued before the effective date of this Act remain valid for a period not to exceed two years from the effective date of this Act.

Sec. 26. REPEALER. Section 8(a), The Public Welfare Act of 1941, as amended (Article 695c, Vernon's Texas Civil Statutes), is repealed.

Sec. 27. EFFECTIVE DATE. This Act shall take effect January 1, 1976.

Sec. 28. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

S. B. No. 965

W P Hobby
President of the Senate

Speaker of the House

I hereby certify that S. B. No. 965 passed the senate on May 16, 1975, by a viva-voce vote; May 31, 1975, senate refused to concur in house amendments and requested appointment of Conference Commiteee; June 2, 1975, house granted request of the senate; June 2, 1975, senate adopted Conference Report by the following vote: Yeas 15, Nays 14, one present not voting.

Charles Schnabel
Secretary of the Senate

I hereby certify that S. B. No. 965 passed the house, with amendments, on May 31, 1975, by the following vote: Yeas 86, Nays 58; June 2, 1975, house granted request of the senate for appointment of Conference Committee; June 2, 1975, house adopted Conference Report by the following vote: Yeas 81, Nays 60.

Dorothy Hallman
Chief Clerk of the House

Approved:

June 21, 1975 ....12:15 pm O'CLOCK
Date

Dolph Briscoe
Governor

Mark White
Secretary of State

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"CCLA" stands for "Child Care Licensing Act of 1975," which is reproduced in this institute book immediately preceding this index.

Dan R. Price, Institute Coordinator
State Bar of Texas

October 1976

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* PROFESSIONAL DEVELOPMENT PROGRAM, STATE BAR OF TEXAS, CHILD ABUSE & PROTECTIVE SERVICES IN TEXAS (1976)

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